



# भारत का राजपत्र The Gazette of India

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No. 35] NEW DELHI, AUGUST 21—AUGUST 27, 2016, SATURDAY/SRAVANA 30—BHADRA 5, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

( कार्मिक और प्रशिक्षण विभाग )

नई दिल्ली, 22 अगस्त, 2016

का.आ. 1744.—केन्द्र सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार सचिवालय, विधान सौध, बेंगलूर की सहमति से दिनांक 10.12.2015 की अधिसूचना एचडी 277 सीआईडी 2014 द्वारा कंप्यूटरीकृत आंकड़ा प्रक्रमण तंत्र के छल्युक्त व्यवहार, गलत नाम के सार्वजनिक प्रयोग, अयाचित संप्रेषण, छुपाने आदि के संबंध में नई दिल्ली स्थित लक्जेमबर्ग के ग्रैंड डची, दूतावास से प्राप्त लेटर रोगेटरी के निष्पादन के लिए विधिक सहायता (दिनांक 15.07.2014 के नोट वरबेल सं. 27/2014) के संबंध में अन्वेषण के लिए एतद्द्वारा दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों एवं क्षेत्राधिकार का विस्तार संपूर्ण कर्नाटक राज्य पर करती है। यह एक तरह का दूरभाष घोटाला है जिसमें दूरभाष द्वारा विश्व भर के हजारों कंप्यूटरों पर आक्रमण किया जाता है। लक्जेमबर्ग भी इन आक्रमणों का निशाना है, जो लक्जेमबर्ग की दंड संहिता की धारा 509-1, 509-2 और 509-3 के उल्लंघन के समान है। उपरोक्त अपराध, सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 की अधिनियम संख्या 21) की धारा 66 के साथ पठित धारा 43 के विभिन्न प्रावधानों तथा उपरोक्त अपराध के संबंध में प्रयास, दुष्प्रेरण या षड्यंत्र या उन्हीं तथ्यों से उद्भूत उन्हीं लेनदेन के दौरान किए गए अपराध या अपराधों के समान है।

[फा. सं. 228/70/2014-एवीडी-II]

एल. पी. शर्मा, अवर सचिव

**MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS****(Department of Personnel and Training)**

New Delhi, the 22nd August, 2016

**S.O. 1744.**—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka, Secretariat, Vidhan Soudha, Bangalore vide Notification No. HD 277 CID 2014 dated 10.12.2015, hereby extends the powers and jurisdiction of the members of Delhi Special Police Establishment to the whole of the State of Karnataka for investigation in respect of execution of Letters Rogatory received from the Embassy of the Grand Duchy of Luxembourg, New Delhi for legal assistance (Note Verbale No. 27/2014 dated 15.07.2014) relating to fraudulent access to an automated data processing system, public use of a false name, unsolicited communication, concealment etc. This is a kind of phone scam, wherein thousands of computers throughout the world are infested by phone call. Luxembourg is also a target of these attacks, which correspond to violation of article 509-1 509-2 and 509-3 of the Criminal Code of Luxembourg. The said offences correspond to various provisions of Section 43 read with 66 of the Information Technology Act, 2000 (Act No. 21 of 2000) and any other offence(s), attempt, abetments and conspiracies in relation to or in connection with the above mentioned offence and any other offence or offences in committed in the course of the same transaction arising out of the same facts.

[F. No. 228/70/2014-AVD-II]

L. P. SHARMA, Under Secy.

**शहरी विकास मंत्रालय**

नई दिल्ली, 17 अगस्त, 2016

**का.आ. 1745.**—केन्द्रीय सरकार एतद्वारा शहरी विकास मंत्रालय के प्रशासनिक नियंत्रणाधीन दिल्ली विकास प्राधिकरण का निम्नलिखित कार्यालय, जिसके 80% से अधिक अधिकारियों और कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 (यथा संशोधित 1987) के नियम 10 के उपनियम (4) के अंतर्गत अधिसूचित करती है:

मुख्य अभियंता (पूर्वी क्षेत्र),  
दिल्ली विकास प्राधिकरण,  
विकास मीनार, नई दिल्ली

[फा. सं. ई-11017/5/2013-हिन्दी]

धर्मेन्द्र, संयुक्त सचिव

**MINISTRY OF URBAN DEVELOPMENT**

New Delhi, the 17th August, 2016

**S.O. 1745.**—In pursuance of Sub-rule (4) of Rule 10 of Official Language (Use for official purpose of the Union) Rules, 1976, the Central Government hereby notified the following office of the Delhi Development Authority, Ministry of Urban Development, where more than 80% of officers/employees have attained working knowledge of Hindi :

Chief Engineer (East Zone)  
Delhi Development Authority  
Vikas Minar, New Delhi

[F. No. E-11017/5/2013-Hindi]

DHARMENDRA, Jt. Secy.

**वाणिज्य एवं उद्योग मंत्रालय**

( वाणिज्य विभाग )

नई दिल्ली, 17 अगस्त, 2016

**का.आ. 1746.**— सार्वजनिक परिसर (अनधिकृत कब्जाधारकों की बेदखली) अधिनियम, 1971 (1971 के 40) की धारा 3 के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्वारा निम्नलिखित तालिका के कॉलम 1 में उल्लिखित अधिकारी को सरकार के राजपत्रित अधिकारी स्तर के समतुल्य अधिकारी होते हुए उक्त अधिनियम के आशय से दि स्टेट ट्रेडिंग कॉर्पोरेशन ऑफ इंडिया लिमिटेड में सम्पदा अधिकारी नियुक्त करती है जो प्रदत्त शक्तियों का प्रयोग करेंगे और उक्त तालिका के कॉलम (2) में संगत प्रविष्टि में उल्लिखित सार्वजनिक परिसरों के संबंध में उक्त अधिनियम के द्वारा अथवा के तहत सम्पदा अधिकारी पर लागू कर्तव्यों का निर्वाह करेंगे।

**तालिका**

(1)	(2)
श्री एन.ए.एन. जयकुमार, मुख्य महाप्रबंधक (विपणन), दि स्टेट ट्रेडिंग कॉर्पोरेशन ऑफ इंडिया लिमिटेड, जवाहर व्यापार भवन, टॉलस्टॉय मार्ग, नई दिल्ली	कोई भी परिसर जो एसटीसी से संबंधित हो अथवा एसटीसी द्वारा या की ओर से पट्टे अथवा लाइसेंस पर लिया गया हो जिसमें इसके आवासीय परिसरों के साथ-साथ कार्यालय परिसर, भूमि, कोई अन्य परिसर या कोई भवन या किसी भवन का हिस्सा, उसमें बगीचा, मैदान तथा ऐसे भवन अथवा भवन के हिस्से आदि से संबंधित आउटहाउस, यदि कोई हो, को शामिल करते हुए।

[फा. सं. 6/6/2006-एफटी (एसटी)]

संजीव थपलियाल, अवर सचिव

**MINISTRY OF COMMERCE AND INDUSTRY**

(Department of Commerce)

New Delhi, the 17th August, 2016

**S.O. 1746.**—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the officer mentioned in column (1) of the Table below, being an officer equivalent to the rank of Gazetted Officer of the Government, to be Estate Officer in State Trading Corporation of India Limited, for the purpose of the said Act, who shall exercise the powers conferred and perform the duties imposed on Estate Officer by or under the said Act, in respect of the Public Premises specified in the corresponding entry in column (2) of the said Table.

**TABLE**

(1)	(2)
Shri N.A.N. Jeykumar, Chief General Manager (Marketing), State Trading Corporation of India Limited, Jawahar Vyapar Bhawan, Tolstoy Marg, New Delhi	Any Premises belonging to, or taken on Lease or License by, or on behalf of the STC which includes its Residential premises as well as Office Premises, Land, any other Premises or any building or part of a building including garden, grounds and outhouses, if any, appertaining to such building or part of a building etc.

[F. No. 6/6/2006-FT (ST)]

SANJEEV THAPLIYAL, Under Secy.

**सूचना और प्रसारण मंत्रालय**

नई दिल्ली, 22 अगस्त, 2016

**का.आ. 1747.**—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में आकाशवाणी महानिदेशालय, प्रसार भारती (सूचना और प्रसारण मंत्रालय) के अधीनस्थ कार्यालय, आकाशवाणी केंद्र, विजयवाड़ा जिसके 80% से अधिक कर्मचारीवृन्द ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[फा. सं. ई-11017/06/2012-हिंदी]

प्रियम्वदा, निदेशक (राजभाषा)

**MINISTRY OF INFORMATION AND BROADCASTING**

New Delhi, the 22nd August, 2016

**S.O. 1747.**—In pursuance of Sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies All India Radio, Vijaywada under Directorate General, All India Radio, Prasar Bharti (Ministry of Information and Broadcasting) more than 80% of the staff whereof have acquired the working knowledge of Hindi.

[F. No. E-11017/06/2012-Hindi]

PRIYAMVADA, Director (O.L.)

**संस्कृति मंत्रालय**

नई दिल्ली, 10 अगस्त, 2016

**का.आ. 1748.**—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में संस्कृति मंत्रालय के अंतर्गत आने वाले कार्यालय जिसमें 80% से अधिक अधिकारियों/कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है जिनका ब्यौरा निम्नानुसार है :—

1. उप मंडल कार्यालय, ताजमहल, भारतीय पुरातत्व सर्वेक्षण, आगरा ।
2. उप अधीक्षण पुरातत्व रसायनज्ञ, भारतीय पुरातत्व सर्वेक्षण, वायु प्रदूषण प्रयोगशाला, आगरा किला, आगरा ।
3. वरिष्ठ संरक्षण सहायक का कार्यालय, उप मंडल, भारतीय पुरातत्व सर्वेक्षण, आगरा ।
4. उप मंडल कार्यालय, फतेहपुर सीकरी, 22 माल रोड, भारतीय पुरातत्व सर्वेक्षण, आगरा ।
5. उप मंडल कार्यालय, सिकन्दरा, भारतीय पुरातत्व सर्वेक्षण, आगरा ।
6. वरिष्ठ संरक्षण सहायक का कार्यालय, उप मंडल, भारतीय पुरातत्व सर्वेक्षण, आगरा किला, आगरा ।
7. संरक्षण सहायक का कार्यालय, भारतीय पुरातत्व सर्वेक्षण, चम्बा उप मंडल, चम्बा ।
8. संरक्षण सहायक का कार्यालय, भारतीय पुरातत्व सर्वेक्षण, मंडी, हिमाचल प्रदेश ।
9. संरक्षण सहायक का कार्यालय, भारतीय पुरातत्व सर्वेक्षण, षिमला उप मंडल कार्यालय, समरहिल राष्ट्रपति निवास, षिमला, हिमाचल प्रदेश-171005 ।
10. क्षेत्रीय निदेशक (उत्तर), भारतीय पुरातत्व सर्वेक्षण, लाल किला परिसर, दिल्ली-6 ।

यह अधिसूचना राजपत्र में प्रकाशन की तारीख से प्रवृत्त होगी ।

[फा. सं. ई-13016/1/2011-हिंदी]

पंकज राग, संयुक्त सचिव

**MINISTRY OF CULTURE**

New Delhi, the 10th August, 2016

**S.O. 1748.**—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices under the Ministry of Culture wherein more than 80% of the officers/staff have acquired the working knowledge of Hindi. Detail is given below :

1. Sub-Circle Office, Taj Mahal, Archaeological Survey of India, Agra.
2. Dy. Superintending Archaeologist Chemist, Archaeological Survey of India, Air Pollution Laboratory, Agra Fort, Agra.
3. Senior Conservation Assistant Office, Sub-Circle, Archaeological Survey of India, Agra.
4. Sub-Circle Office, Fatehpur Sikri, 22 Mall Road, Archaeological Survey of India, Agra.
5. Sub-Circle Office, Sikandra, Archaeological Survey of India, Agra.
6. Senior Conservation Assistant, Office of Sub-Circle, Archaeological Survey of India, Agra Fort, Agra.
7. Conservation Assistant, Office of Archaeological Survey of India, Chamba Sub-Circle, Chamba.
8. Conservation Assistant, Office of Archaeological Survey of India, Mandi, Himachal Pradesh.
9. Conservation Assistant, Office of Archaeological Survey of India, Shimla Sub-Circle Office, Summer Hill, President Residence, Shimla, Himachal Pradesh-171005.
10. Regional Director (North), Archaeological Survey of India, Red Fort Compound, Delhi-6.

This notification shall come into force from the date of publication in the Official Gazette.

[F. No. E-13016/1/2011-Hindi]

PANKAJ RAG, Jt. Secy.

**श्रम एवं रोजगार मंत्रालय**

नई दिल्ली, 11 अगस्त, 2016

**का.आ. 1749.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्कोप के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 48/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2016 को प्राप्त हुआ था।

[सं. एल-42011/202/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 11th August, 2016

**S.O. 1749.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 48/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the SCOPE and their workmen, which was received by the Central Government on 10.08.2016.

[No. L-42011/202/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

## ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI****ID No. 48/2016**

Shri Umesh Chander S/o Shri Shri Chand, through  
The President,  
Delhi Offices and Establishment Employees Union  
Affiliated to CITU, BTR Bhawan,  
13 A, Rouse Avenue  
New Delhi-110 019

...Workman

**Versus**

1. The General Manager,  
SCOPE,  
Core No.8, 1<sup>st</sup> Floor,  
SCOPE - 7, Lodhi Road,  
New Delhi-110 003
2. M/s Sentinels Security Pvt. Ltd.  
40/93, 40/92, Chittaranjan Park,  
New Delhi-110 019

...Managements

**AWARD**

Central Government, vide letter No.L-42011/202/2015-IR(DU) dated 01.01.2016, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the termination of Shri Umesh Chander S/o Shri Shri Chand with effect from 28.10.2014 by the management of Sentinels Security Pvt. Ltd. is just, fair and legal? If not, what relief the workman concerned is entitled to? Whether the contract awarded by SCOPE(Principal Employer) to Sentinels Security Pvt. Ltd. for employment of security guards in the establishment of principal employer can be construed as sham and bogus as requested by the workman Shri Umesh Chander S/o Shri Shri Chand? If yes, what relief the workman is entitled to?

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Umesh Chander opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : August 9, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 11 अगस्त, 2016

**का.आ. 1750.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्कोप के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 50/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2016 को प्राप्त हुआ था।

[सं. एल-42011/204/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2016

**S.O. 1750.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 50/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the SCOPE and their workmen, which was received by the Central Government on 10.08.2016.

[No. L-42011/204/2015-IR (DU)]  
P. K. VENUGOPAL, Desk Officer

**ANNEXURE**

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID No. 50/2016**

Shri Subhash Dohri S/o Shri Banmali Dohri, through  
The President,  
Delhi Offices and Establishment Employees Union  
Affiliated to CITU, BTR Bhawan,  
13 A, Rouse Avenue  
New Delhi-110 019

...Workman

**Versus**

1. The General Manager,  
SCOPE,  
Core No.8, 1<sup>st</sup> Floor,  
SCOPE - 7, Lodhi Road,  
New Delhi -110 003
2. M/s. Sentinels Security Pvt. Ltd.  
40/93, 40/92, Chittaranjan Park,  
New Delhi-110 019

...Managements

**AWARD**

Central Government, vide letter No.L-42011/204/2015-IR(DU) dated 01.01.2016, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the termination of Shri Subhash Dohri, S/o Shri Banmali Dohri with effect from 28.10.2014 by the management of Sentinels Security Pvt. Ltd. is just, fair and legal? If not, what relief the workman concerned is entitled to? Whether the contract awarded by SCOPE(Principal Employer) to Sentinels Security Pvt. Ltd. for employment of security guards in the establishment of principal employer can be construed as sham and bogus as requested by the workman Shri Subhash Dohri, S/o Shri Banmali Dohri? If yes, what relief the workman is entitled to?”

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Subhash Dohri opted not to file his claim statement with the Tribunal.
3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.
4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : August 9, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 11 अगस्त, 2016

**का.आ. 1751.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्कोप के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 51/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2016 को प्राप्त हुआ था।

[सं. एल-42011/205/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2016

**S.O. 1751.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 51/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the SCOPE and their workmen, which was received by the Central Government on 10.08.2016.

[No. L-42011/205/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID No. 51/2016**

Shri Vimal Kumar S/o Shri Shyam Lal, through  
The President,  
Delhi Offices and Establishment Employees Union  
Affiliated to CITU, BTR Bhawan,  
13 A, Rouse Avenue  
New Delhi-110 019

...Workman

#### Versus

1. The General Manager,  
SCOPE,  
Core No.8, 1<sup>st</sup> Floor,  
SCOPE - 7, Lodhi Road,  
New Delhi-110 003
2. M/s Sentinels Security Pvt. Ltd.  
40/93, 40/92, Chittaranjan Park,  
New Delhi-110 019

...Managements

#### AWARD

Central Government, vide letter No.L-42011/205/2015-IR(DU) dated 01.01.2016, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the termination of Shri Vimal Kumar S/o Shri Shyam Lal with effect from 28.10.2014 by the management of Sentinels Security Pvt. Ltd. is just, fair and legal? If not, what relief the workman concerned is entitled to? Whether the contract awarded by SCOPE (Principal Employer) to Sentinels Security Pvt. Ltd. for employment of security guards in the establishment of principal employer can be construed as sham and bogus as requested by the workman Shri Vimal Kumar S/o Shri Shyam Lal? If yes, what relief the workman is entitled to?”

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Vimal Kumar opted not to file his claim statement with the Tribunal.
3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No



claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : August 9, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 11 अगस्त, 2016

**का.आ. 1752.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्कोप के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 52/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2016 को प्राप्त हुआ था।

[सं. एल-42011/206/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2016

**S.O. 1752.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 52/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the SCOPE and their workmen, which was received by the Central Government on 10.08.2016.

[No. L-42011/206/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID No. 52/2016**

Shri Bharat Singh S/o Shri Bhawar Lal Jat, through  
The President,  
Delhi Offices and Establishment Employees Union  
Affiliated to CITU, BTR Bhawan,  
13 A, Rouse Avenue  
New Delhi-110 019

...Workman

#### Versus

1. The General Manager,  
SCOPE,  
Core No.8, 1<sup>st</sup> Floor,  
SCOPE - 7, Lodhi Road,  
New Delhi-110 003
2. M/s Sentinels Security Pvt. Ltd.  
40/93, 40/92, Chittaranjan Park,  
New Delhi-110 019

...Managements

#### AWARD

Central Government, vide letter No.L-42011/206/2015-IR(DU) dated 06.01.2016, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the termination of Shri Bharat Singh S/o Shri Bhawar Lal Jat with effect from 28.10.2014 by the management of Sentinels Security Pvt. Ltd. is just, fair and legal? If not, what relief the workman concerned is entitled to? Whether the contract awarded by SCOPE(Principal Employer) to Sentinels Security Pvt. Ltd. for employment of security guards in the establishment of principal employer can be construed as sham and

bogus as requested by the workman Shri Bharat Singh S/o Shri Bhawar Lal Jat? If yes, what relief the workman is entitled to?

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Bharat Singh opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : August 9, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 11 अगस्त, 2016

**का.आ. 1753.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्कोप के प्रबंधन के संबंधित नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 53/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2016 को प्राप्त हुआ था।

[सं. एल-42011/207/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2016

**S.O. 1753.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 53/2016) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the SCOPE and their workmen, which was received by the Central Government on 10.08.2016.

[No. L-42011/207/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID No. 53/2016**

Shri Girdhari Lal Sharma S/o Shri Panna Lal Sharma, through  
The President,  
Delhi Offices and Establishment Employees Union  
Affiliated to CITU, BTR Bhawan,  
13 A, Rouse Avenue  
New Delhi-110 019

...Workman

#### Versus

1. The General Manager,  
SCOPE,  
Core No.8, 1<sup>st</sup> Floor,  
SCOPE - 7, Lodhi Road,  
New Delhi-110 003

2. M/s Sentinels Security Pvt. Ltd.  
40/93, 40/92, Chittaranjan Park,  
New Delhi-110 019

...Managements

### AWARD

Central Government, vide letter No.L-42011/207/2015-IR(DU) dated 06.01.2016, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the termination of Shri Girdhari Lal Sharma S/o Shri Panna Lal Sharma with effect from 28.10.2014 by the management of Sentinels Security Pvt. Ltd. is just, fair and legal? If not, what relief the workman concerned is entitled to? Whether the contract awarded by SCOPE(Principal Employer) to Sentinels Security Pvt. Ltd. for employment of security guards in the establishment of principal employer can be construed as sham and bogus as requested by the workman Shri Girdhari Lal Sharma S/o Shri Panna Lal Sharma? If yes, what relief the workman is entitled to?

2. In the reference order, the appropriate Government commanded the parties raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Girdhari Lal Sharma opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : August 9, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 11 अगस्त, 2016

**का.आ. 1754.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल अफसर कमांडिंग/पैटर्न गरुड़ यूआरसी के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ सं. 56/15) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2016 को प्राप्त हुआ था।

[सं. एल-14012/01/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2016

**S.O. 1754.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 56/15) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Officer Commanding/Pattern Garud URC & others and their workmen, which was received by the Central Government on 10.08.2016.

[No. L-14012/01/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, DELHI****Present:-** Shri Harbansh Kumar Saxena**ID. No. 56/15**

Sri. Neeraj Aggarwal, S/o Chhotey Lal Aggarwal,  
R/o 178, Kanoon Goyan, Triveni Bhawan Compound,  
Prem Nagar,  
Bareilly (U.P.).

**Vurses**

The General Officer Commanding/Pattern,  
Garud URC , HQ 6 Mtn Div, Pin 908406  
C/o 56 APO,  
Bareilly (U.P.) 243001.

The Chairman (Dy GOC),  
Garud URC , HQ 6 Mtn Div, Pin 908406  
C/o 56 APO,  
Bareilly (U.P.) 243001.

The Dy. Chairman (Col Q),  
Garud URC , HQ 6 Mtn Div, Pin 908406  
C/o 56 APO,  
Bareilly (U.P.) 243001.

The Canteen Officer,  
Garud URC, HQ 6 Mtn Div, Pin 908406,  
C/o 56 APO,  
Bareilly (U.P.) , 243001

**AWARD**

The Central Government in the Ministry of Labour Vide Letter No. L-14012/01/2015-IR(DU) dated 18.02.2015 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of Garud URC is justified in terminating the workman Sh. Neeraj Aggarwal without giving him any opportunity to be heard or subject to any enquiry proceeding? If not, he not be reinstate with certain back wages.

On 1.05.2015 reference was received in this Tribunal. Which was register as I.D No.56/15 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman filed claim statement on 19.6.2015. Where-in he prayed as follows:-

“It is therefore, most respectfully prayed that present reference may kindly be passed in the favour of the workman and against the management and claimant/workman may kindly be reinstated with full back wages and continuity of service alongwith benefits attached to his services under the law.

Any other relief which this Hon’ble court deems fit and proper in the circumstances of the case may also be awarded to the workman in the interest of justice.

Several opportunities given to management to file its written statement but he failed. So on 4.12.2015 I closed the right of filing of written statement by management.

And fixed 21.01.2016 for workman evidence.

On 21.01.2016 workman filed his affidavit and on 26.2.2016 he tendered his affidavit and his cross-examination is marked nil.

I have heard the arguments of Ld. A/R for the workman as case is being proceeded ex-parte against management.

In the light of contentions of Ld. A/R for the workman. I perused the pleadings and evidence of workman including written arguments of workman on record.

Perusal of contents of clause (iii) of para 8 at page 5 of claim statement makes it crystal clear that workman was Accountant Type –B in pay scale Rs. 7500-15-1200, since 26.12.2009.

Perusal of contents of para 7 of affidavit of workman in his evidence shows that workman reaffirmed the aforesaid contents of claim statement.

Perusal of contents of para 6(i) of written arguments shows that workman reaffirmed the aforesaid.

Contents of claim statement and contents of his affidavit in his evidence.

It is relevant to mention here that workman defined in S.2(S) of I.D. Act 1947 is only entitled to relief under I.D. Act 1947.

S.2(S) of I.D. Act 1947 provides four exceptions. Through which persons mentioned in exceptions have been excluded from the category of workman.

In the instant case exceptions No. 1 to 3 of S.2(S) of I.D. Act are inapplicable.

But following exception No.4 of S.2(S) of I.D. Act 1947 is applicable in the instant case.

Because workman is employed nature mainly in a supervisory, capacity, draws wages exceeding Rs. 1600 P.M.

Their Lordship of Hon'ble Supreme Court in case S.K. Maini Vs. Carona Sahu Co.Ltd. (1994) 3 Supreme Court cases 510 well explained the distinction between works of manager or administrative officer and clerk and laid down following principle:-

“The former is generally vested with power of supervision in contradistinction to the stereotype work of the latter.”

Which applies with full force in the instant case.

Ld.A/R for the claimant placed reliance on principle laid down in case of Hindustan Steel Ltd. Vs. State of Orissa 1977 (1) S.L.R. P 199.

Which is inapplicable as claimant is not workman.

In the instant case claimant has not proved himself to be workman.

Hence he is entitled to no relief.

In these circumstances reference is liable to be decided in favour of management and against workman. Which is accordingly decided. Claim statement is dismissed.

Award is accordingly passed.

Dated: 30/06/2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 11 अगस्त, 2016

**का.आ. 1755.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनटीपीसी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ सं. 60/11) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2016 को प्राप्त हुआ था।

[सं. एल-42011/6/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2016

**S.O. 1755.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 60/11) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the NTPC Limited and their workmen, which was received by the Central Government on 10.08.2016.

[No. L-42011/6/2011-IR (DU)]

P. K. VENUGOPAL, Desk Officer

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT - II, DELHI****Present:-** Shri Harbansh Kumar Saxena**ID. No. 60/11**

The General Manager,  
NTPC Limited,  
NCPS, Dadri, P.O. Vidyut Nagar,  
Gautam Budh Nagar (UP).

**Versus**

The General Secretary,  
NTPC Karmachari Sangh, B-508, Vidyut Nagar, NTPC,  
Gautam Buddh Nagar, (UP).

**AWARD**

The Central Government in the Ministry of Labour Vide Letter No:- 42011/6/2011( IR(DU)) dated 09.09.2011 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of NTPC, Dadri, in not constituting works committee and constituting shop level committee without elected representative of workers amount to unfair labour practice and is illegal and unjustified? If so to what relief they are entitled to ?”

On 26.09.2011 reference was received in this Tribunal. Which was register as I.D No.60/2011 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workmen filed claim statement on 4.11.2011. Through which he prayed as follows:-

“It is therefore, most respectfully prayed that this Hon’ble Court may kindly be please to direct the management to take the nominated members of NTPC karmachari Sangh in all the committees which are in existence and invite them in all the meetings organize by the management for the welfare of the workers and organize secrete ballet election immediately and in case if the management failed to do so then may pass an award in favour of the claimant and against the management in the interest of justice.

Against claim statement management filed written statement on 16.08.2012. Where-in management prayed as follows:-

“That the contents of the prayer clause are wrong and denied. It is denied that claimant union is entitled to seek directions against the management to take nominated members of the claimant union the committees which are in existence as alleged. It is submitted that contents of the prayer clause of the claim are misconceived and without any basis. It is submitted that the present claim is not maintainable and no such directions can be sought by the claimant union against the management. It is therefore prayed that the present claim may kindly be rejected in the interest of justice.

Against written statement workman filed rejoinder on 27.09.2012. Through which they re-affirmed the contents of claim statement.

On 8.11.2012 my Ld. Predecessor passed order on order sheet that no other issue than one mentioned in the reference requires to be framed in this case.

So he fixed 21.02.2013 for workman evidence by way of affidavit .

On 21.02.2013 none for workman. Hence 11.04.2013 was fixed for workman evidence.

On 11.04.2013 none for workman. Hence 30.05.2013 was fixed for workman evidence.

On 30.05.2013 Ld. A/R for the workman sought adjournment. Which was allowed and case adjourned 16.08.2013.

On 16.08.2013 none for workman but case was adjourned to 3.10.2013 for workman evidence.

On 3.10.2013 workman sought adjournment. Which was allowed and case was adjourned to 22.11.2013.

On 22.11.2013 none for workman but case was adjourned to 23.01.2014 for workman evidence.

On 23.01.2014 adjournment was sought on behalf of workman. So case was adjourned to 20.03.2014 for workman evidence.

On 20.03.2014 none for workman but case was adjourned to 15.05.2014 for workman evidence.

On 15.05.2014 case was adjourned to 10.07.2014 for workman evidence.

On 10.07.2014 case was adjourned to 4.09.2014 for workman evidence.

On 4.09.2014 case was adjourned to 27.11.2014 for workman evidence as last opportunity .

On 27.11.2014 workman evidence was closed and fixed 15.01.2015 for management evidence/arguments.

On 15.01.2015 Ld. A/R for the management sought time to file affidavit of management witness. Which was allowed and 19.03.2015 was fixed to file affidavit of management witness. On 19.03.2015 advocates were on strike so case was adjourned to 21.05.2015 for management evidence. On 21.05.2015 Ld. A/R for the management sought adjournment which was allowed and 23.07.2015 was fixed for management evidence/arguments. On 23.07.2015 advocates were on strike so case was adjourned to 10.09.2015. On 10.09.2015 Ld. A/ R for the management sought adjournment and which was allowed and case was adjourned to 5.11.2015 for management evidence/argument.

On 5.11.2015 case was adjourned to 31.12.2015 for management evidence/arguments. On 31.12.2015 case was adjourned to 11.02.2016 for management evidence/argument. On 11.02.2016 Ld.A/R for the management sought time which was allowed and case was adjourned to 7.04.2016. On 7.04.2016 Ld.A/R for the management sought time which was allowed and case was adjourned to 2.06.2016. On 2.06.2016 affidavit of MW1. Anil Kumar Chawla, was filed and MW1 tendered his affidavit and his cross-examination is marked nil as none to come to cross-examine him and fixed 30.06.2016 for filing of written arguments by management. On 30.06.2016 Ld. A/R for the management orally argued and filed written arguments.

In the light of contentions of Ld. A/R for the management it is a fit case to decide reference in favour of management and against workmen.

Which is accordingly decided and claim statement is dismissed.

Award is accordingly passed.

Dated:-27.07.2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 11 अगस्त, 2016

**का.आ. 1756.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंदिरा गांधी नेशनल ओपन यूनिवर्सिटी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ सं. 27/10) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2016 को प्राप्त हुआ था।

[सं. एल-42012/72/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2016

**S.O. 1756.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 27/10) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Indira Gandhi National Open University and their workman, which was received by the Central Government on 10.08.2016.

[No. L-42012/72/2010-IR (DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

**Present:-** Shri Harbansh Kumar Saxena

**ID. No. 27/10**

Smt. Mukesh Devi W/o Sh. Ashok,  
H.No. 125, Balmik Basti, Maidan Garhi,  
New Delhi-110068.

**Versus**

The Vice Chancellor,  
Indira Gandhi National Open University,  
R.No. 1 , Block No. 8 , Maidan Garhi,  
New Delhi.-110068.

### AWARD

The Central Government in the Ministry of Labour Vide Letter No:- 42012/72/2010 ( IR(DU)) dated 18.08.2010 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of IGNOU, in terminating the services of their workman Smt. Mukesh, Devi, w.e.f 01.11.2007 is legal and justified. If not what relief the workman is entitled to”

On 01.09.2010 reference was received in this Tribunal. Which was register as I.D No.27/10 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman filed claim statement on 10.09.2013. Through which she prayed as follows:-

1. That this Hon’ble Court may kindly be pleased to hold the termination of the services of the applicant workman (female) illegal, unwarranted, unwanted, unjustified, and malicious.
2. That the Hon’ble Court may kindly be pleased to award reinstatement with continuity of service and back wages.
3. That the Hon’ble Court may also be pleased to award all consequential benefits to the applicant workman (female) with retrospective effect.
4. Any other or further relief the Hon’ble Court may like to award in favour of applicant workman (female)

Against claim statement management filed written statement on 8.3.2013. Where-in management prayed as follows:-

“It is therefore , prayed that this Hon’ble Court may be pleased to dismiss the claim statement against the applicant and in favour of the Respondent management.

On 8.5.2013 my Ld. Predecessor framed following two issues:-

1. Whether there does not exist relationship of employer and employee between the parties?
2. As in terms of reference.

Fixed 12.07.2013 for evidence of parties.

On 12.07.2013 case was adjourned to 8.8.2013 for evidence of parties.

On 8.8.2013 case was adjourned to 9.9.2013 for evidence of parties.

On 9.9.2013 case was adjourned to 1.10.2013 for evidence of parties.

On 1.10.2013 workman has not filed any affidavit in his evidence but management filed affidavit of Sh. S.S.Bisht of MW. Copy of which supplied to Ld. A/R for the workman.

Fixed 6.12.2013 for tendering of affidavit and cross-examination of MW.

On 6.12.2013 case was adjourned to 20.02.2014 for the same.

On 20.02.2014 workman moved an application for filing of rejoinder and workman evidence.

But workman remained dormant to get it press by his Ld. A/R inspite of several opportunities.

Ultimately this Tribunal on 11.05.2016 rejected the aforesaid application of workman as none to press it since long. Fixed 18.07.2016 for management evidence /arguments.

On 18.07.2016 management has not adduced its evidence. Hence management evidence has been closed.

Award was reserved.

I perused the pleadings and evidence on record to pass reserved Award.

In the instant case none of the party adduced its evidence. So it is a fit case to pass “No Dispute Award”

Which is accordingly passed.

Dated:-27.07.2016

HARBANSH KUMAR SAXENA, Presiding Officer



नई दिल्ली, 11 अगस्त, 2016

**का.आ. 1757.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ सं. 16/12) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2016 को प्राप्त हुआ था।

[सं. एल-40012/69/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2016

**S.O. 1757.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 16/12) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 10.08.2016.

[No. L-40012/69/2011-IR (DU)]

P. K. VENUGOPAL, Desk Officer

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI****Present:-** Shri Harbansh Kumar Saxena**ID. No. 16/12**

Sh. Ranbir, S/o Sh. Panna Lal,  
Parwatia Colony, NIT,  
Faridabad

...Workman

**Versus**

The General Manager,  
Bharat Sanchar Nigam Limited,  
Sector-15,  
Faridabad

...Management

**AWARD**

The Central Government in the Ministry of Labour vide Letter No.L-40012/69/2011 (IR(DU) dated 05.12.2011 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of BSNL, in terminating the services of Sh. Ranbir S/o Sh. Panna Lal, Ex-Cable Jinter w.e.f. 23.08.2010, is legal and justified? What relief the workman is entitled to?”

On 9.1.2012 reference was received in this Tribunal. Which was register as I.D No. 16/2012 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 18.12.2012 claim statement was filed by workman. Through which he prayed as follows:-

- To direct the management to reinstate the services of workman with continuity of service, full back wages alongwith consequential relief.
- To direct the management to pay the due salary for the month of August ,2010;
- To direct the management to pay the service benefits including provident fund and ESI to the workman/claimant;
- To pass any other and further orders in favour of the workman/claimant.

Against claim statement management filed its written statement on 13.03.2013. Wherein management denied the contents of claim statement and prayed for dismissal of claim statement.

On 22.05.2013 my Ld. Predecessor Dr. R.K. Yadav framed following issues:-

1. Whether there existed relationship of employer and employee between the parties.
2. As in terms of reference.

And fixed 30.07.2013, 21.08.2013 and 9.10.2013 for workman evidence.

On 9.10.2013 workman filed his affidavit in his evidence. Copy of which supplied to management. Fixed 13.11.2013 for tendering of affidavit and cross-examination of workman.

After.11.2013,15.01.2014,12.03.2014,21.05.2014,6.8.2014,1.10.2014, 10.12.2014, 11.02.2015, 15.04.2015, 17.06.2015, 26.08.2015 and 28.10.2015 as last opportunity.

Hence this Tribunal closed the right of evidence of workman on 28.10.2015 and fixed 30.12.2015 for management evidence.

On 30.12.2015 case adjourned to 9.3.2016. On 9.3.2016 MW1 A.K. Verma filed his affidavit and tendered his affidavit. His cross-examination was marked as nil.

Thereafter Ld. A/R for the management closed the evidence of Management then I fixed 4.5.2016 for arguments.

On 4.5.2016 I heard the arguments of Id. A/R for the management. Then I reserved the Award.

I perused the pleadings and evidence of parties on record.

Which makes it crystal clear that there is pleadings of claimant /workman in his claim statement and there is affidavit of workman in his evidence. Which has not been tendered by workman after several opportunities and his right of evidence has been closed by me. Hence there is no evidence of workman.

Management in support of its case produce MW., who tendered his affidavit. His cross was marked nil. Hence there is un rebutted evidence of management. Which comes in the category of reliable and credible evidence.

So on the basis of which issue no. 1 is liable to be decided against workman and in favour of management in want of evidence of workman and reliable and credible evidence of management. Which is accordingly decided.

As Issue No. 1 has already been decided in favour of management.

So Issue No. 2 which relates to relief to workman in also liable to be decided against workman and in favour of management. Hence workman is found entitled to no relief.

Reference is liable to be decided in favour of management and against workman.

Which is accordingly decided and claim statement is dismissed.

Award is accordingly passed.

Dated:-27/6/2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 11 अगस्त, 2016

**का.आ. 1758.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल वेयरहाउसिंग कारपोरेशन के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ सं. 89/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2016 को प्राप्त हुआ था।

[सं. एल-42011/22/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2016

**S.O. 1758.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 89/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Central Warehousing Corporation and their workman, which was received by the Central Government on 10.08.2016.

[No. L-42011/22/2013-IR (DU)]

P. K. VENUGOPAL, Desk Officer

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI****Present:-** Shri Harbansh Kumar Saxena**ID. No. 89/2013**

The Vice President,  
Federation of CWC , Employees Union,  
RZ-124, Vaishali , Dabri Palam Road,  
New Delhi -45

**Versus**

The Management Director,  
Central Warehousing Corporation,  
Corporate Office,  
New Delhi.

**AWARD**

The Central Government in the Ministry of Labour Vide Letter No:- 42011/22/2013( IR(DU)) dated 11.07.2013 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of Central Warehousing Corporation in fixing /paying lesser pay to senior employees in any manner is just & fair? ii. Whether the action of the management in rectification of wages after 18/20 years and any recovery as a consequence or resulting in lesser pay in just and fair?”

On 23.07.2013 reference was received in this Tribunal. Which was register as I.D No.89/2013 and claimants were called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workmen filed claim statement on 10.09.2013. Through which they prayed as follows:-

Tribunal may be pleased to direct the management to—

- a) re-fix the pay of the concerned workmen according to their original due date of increment so as bring them at par with their juniors as on 01.01.2007;
- b) restore their original dated of increments;
- c) direct the management to pay to the said workmen arrears of pay with 10 % interest per annum; and
- d) pass any other and/or further directions as may be deemed just and proper.

Against claim statement management filed written statement on 19.12.2013. Where-in management prayed as follows:-

“It is therefore, most respectfully prayed /submitted that the Hon’ble Tribunal may be pleased to hold that the dispute /demands being raised by the union in the statement of claim are totally illogical , misconceived, unjustified and untenable both under the law and the facts and the workmen are not entitled to any relief . The order of reference is not maintainable for the reasons as stated in the preliminary objections and an award may please be passed accordingly.”

Against written statement workman filed rejoinder on 28.02.2014. Through which they re-affirmed the contents of claim statement.

On 4.4.2014 I framed following three issues:-

1. Whether the action of the management of Central Warehousing Corporation in fixing /paying lesser pay to senior employees in any manner is just and fair? If so its effect?
2. Whehter the action of the management in rectification of wages after 18/20 years and any recovery as a consequence or resulting in lesser pay is just and fair ? if so its effect?
3. To what relief the workman are entitled to and from which date?

On 31.3.2016 I framed following additional issue:-

Whether the claimants claim is duly espoused ? If so its effect?

Fixed 12.04.2016 for tendering of affidavit and cross-examination of workman.

On 12.04.2016 management sought adjournment . Which was allowed and case was adjourned to 11.07.2016.

On 11.07.2016 it was pointed out that application on behalf of workman has been moved wherein their desire was not to pursue the matter as matter has already been resolved .

According to desire of Sh. S.K. Sharma, Vice President of workman union further proceedings in the instant case is not required.

Hence case was reserved for Award.

In this back ground it is fit case for passing of “ No Dispute Award”.

Which is accordingly passed.

Dated:-27.07.2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 11 अगस्त, 2016

**का.आ. 1759.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार म्युनिसिपल कारपोरेशन ऑफ दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 40/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2016-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2016

**S.O. 1759.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 40/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Municipal Corporation of Delhi and their workman, which was received by the Central Government on 10.08.2016.

[No. L-42025/03/2016-IR (DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

#### IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, DELHI

**I.D. No. 40/2013**

Shri Jaswant Singh, S/o Shri Chander Lal, through  
Jagriti Labour Union, X-1A, Civil Side,  
Tis Hazari,  
Delhi 110 054

...Workman

#### Versus

1. The Commissioner,  
Municipal Corporation of Delhi,  
Civic Centre, Minto Road,  
New Delhi 110 002
2. The Deputy Commissioner,  
Municipal Corporation of Delhi,  
Narela Zone,  
Narela, Delhi

...Management

#### AWARD

Present case has been filed under provisions of Section 2 of Section 2A of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) by the workman herein with the averments that the workman was appointed by the management in the year 1986 as safai karamchari and was drawing salary of Rs.8200.00 per month, which was less

than the minimum wage fixed by the Government. It is the case of the workman that on 13.11.2006, he fell ill and was under the medical treatment from a doctor at Rathi Clinic, Jahangirpuri, Delhi and was also advised rest from 23.12.2008. Thereafter, on 24.12.2008, the workman reported for duties with the management. An official of the management, on the application itself, permitted the workman to remain on duty. Thereafter, on 02.07.2010, workman received a letter from management that his attendance is to be marked on biometric system installed by the management. However, when the workman tried to mark his attendance in the biometric machine, it was found to be out of order as a result of which the workman could not mark his attendance in the system. Thereafter, on 20.07.2010, Commissioner, Narela Zone hand over a dasti order to the workman calling for reasons as to why the workman herein was not marking his attendance on the biometric system. It is not out of place to mention here that the workman herein is illiterate and can hardly sign. The workman, on 02.07.2010, after receipt of the above letter, approached officials of the management 2-3 times for marking of his attendance in the biometric system. He was neither allowed to mark his attendance nor was he informed as to why he was not being allowed. Thereafter, on 20.07.2010, services of the workman was terminated. Workman made enquiries to as to what was the reason for his termination. However, nothing was done by the management in this regard. Workman herein also tried to approach other officials of the management at Narela, who assured to take him back in the job, but to no avail. He has also submitted letter dated 09.07.2012 in this regard wherein workman has demanded his salary for the period he was on medical treatment, alongwith wages. Thereafter, the workman herein raised a dispute before the Conciliation Officer. However, no action was taken by the Conciliation Officer as a result of which the workman was constrained to file the matter directly before this Tribunal.

2. Reply to the statement of claim was filed on behalf of North Delhi Municipal Corporation, Management No.1, wherein it is alleged that since 13.11.2006 the workman was absent without sanction of leave. Thereafter, he only turned up for joining duties. He is a habitual absentee. Even on earlier occasions, he was warned by the management to be careful in future. It is also denied that on 24.12.2008, workman was on duty. He was served notice on 02.07.2010 to mark his presence on biometric system but the workman has failed to record his presence therein. He was given 7 days time to follow the latest system, but of no use. Thereafter, on 20.07.2010, his services were terminated by the management do to his absence. The workman never approached the officials of the management on 13.11.2006. Workman has also not filed any reply dated 02.07.2010 nor has he tried to mark his presence, as stated above, in the biometric system. Thereafter, vide order dated 20.07.2010, services of the workman was terminated. His termination is in accordance with law.

3. Against this factual background, my learned predecessor, vide order dated 16.07.2012 framed the following issues:

- (1) Whether order dated 20.07.2010 passed by the Commissioner, North Delhi Municipal Corporation is in consonance with service conditions of the claimant? If no, its effects.
- (2) Whether claimant is entitled for relief of reinstatement in service?

4. It is pertinent to note here that the management was proceeded ex-parte vide a order dated 18.05.2015.

5. Workman in order to support his case examined himself as WW1 and tendered in evidence Ex.WW1/A. his affidavit is on the same lines as per the averments contained in the statement of claim. Management has not examined any witness so as to rebut the case of the workman herein. It is clear from the statement of the workman as well as his affidavit Ex.WW1/A that the workman fell ill on 13.11.2006 and was under the medical treatment of a doctor. Workman also filed in evidence his medical certificate Ex.WW1/2 which shows that Dr. R.S. Rathi has medically treated the workman and he was suffering from schizophrenia. Doctor has further stated that the workman is fit to join duties from 23.12.2008. There is also an application Ex.ww1/1 which is addressed by the workman to the management. It is clearly averred in the application that the workman, who is a safai karamchari, remained ill from 13.11.2006 to 22.12.2008. He was not in a proper frame of mind. He was having mental disturbance and the doctor has issued medical certificate Ex.WW1/2. Management had issued an office order Ex.WW1/3 which clearly shows that the management had introduced biometric system of attendance for all employees with effect from 01.08.2008. It is further clear from the said notice dated 02.07.2010 Ex.WW1/3 that the workman has filled up registration form but has not come forward to record thumb impression in the biometric machine for the purpose of attendance. Ex.WW1/4 is the order of termination dated 20.07.2010 passed by the management against the workman, which reads as under:

“Whereas a notice vide No.251/DC/N/2010 dated 02.07.2010 was issued to you to finally get yourself registered under the biometric system of attendance within seven days of issue of notice stating failing which your name will be removed from the roll of employees of MCD without any further notice in this regard and consequences will follow. A copy of the said notice was also displayed at the notice board installed in the Zonal Office premises.

And whereas neither any reply was received nor did you turn up to get yourself registered in the biometric system of attendance even after lapse of sufficient time.

Now, therefore, in exercise of the powers conferred vide Circular No.4033/CED dated 09<sup>th</sup> July 2010 issued under the signatures of Commissioner, MCD, your services are terminated with immediate effect.”

6. Workman has also filed notice Ex.WW1/5 wherein he has raised a dispute before the Commissioner clearing stating that he was ill from 13.11.2006 to 23.11.2008. There is another application Ex.WW1/8 filed by the workman to the management so as to permit him to join duty. In the said application, it is clearly mentioned that mental condition of the workman was not proper as a result of which he is not in a position to attend office during the period 13.11.2006 onwards.

7. As discussed above, no evidence has been adduced by the management so as to rebut the case of the workman regarding his illness during the above period, i.e. from 13.11.2006 onwards. Letter of appointment of the workman Ex.WW1/M1, clearly shows that workman was appointed as safai karamchari by the management. This letter clearly proves that the workman herein, at the material time, was in the employment of the management. Admittedly in the present case no enquiry was conducted against the workman before order of termination of his service vice Ex.WW1/M1 was passed. There is no evidence adduced by the management so as to rebut the case of the workman regarding his illness. Since Dr. Rathie has clearly stated in the medical certificate that the claimant is suffering from schizophrenia and was under his treatment from 13.11.2006 to 2008. As such, it is reasonable to hold that the workman during the above period was suffering from mental illness. Workman has clearly stated in his cross examination that he was appointed by the management against a permanent post as is clear from letter Ex.WW1/1. The workman has specifically denied the suggested that the workman had intentionally absented from duty without any intimation. Even if it is presumed that the workman was absent without any rhyme or reason, it was incumbent upon the management to consider the application filed before joining as well as the medical certificate filed by the workman when he made an attempt to join duties. Thus, action of the management in terminating the workman without holding a domestic enquiry is cannot be legally sustained, as such, same is held to be invalid under the law.

## Issue No. 2

8. Now, the only residual question which arises for consideration is whether the workman is entitled for relief of reinstatement in service. Evidence adduced by the workman clearly shows that he could not attend duty, as discussed above, due to his illness and workman was holding a permanent post when his services were terminated by the management vide Ex.WW1/4 without holding a domestic enquiry. Workman was in service as per pleadings and evidence on record since 1986 onwards. When termination of the workman has been found to be against principles of natural justice as the same has been done without holding any valid and proper enquiry, in that eventuality, this Tribunal is of the opinion that the workman is entitled for reinstatement with full back wages. This view has been taken by the Hon'ble High Courts in a number of cases and reference can be made to the case of Jaipal Sharma vs. The Presiding Officer, Labour Court No.VIII, Delhi Transport Corporation vs. Shri Shyam Singh, Delhi Transport Corporation Vs. Rajpal, Swaminath Mahato Vs. Hotel Kanishka, Harjinder Singh Vs. Punjab State Warehousing Corporation (AIR 2010 SC 1116) and lastly MCD Vs Vijay Pal. In all these cases, Hon'ble High Court of Delhi has taken a consistent view that where termination of service is due to non-compliance of provisions of Section 25F of the Act and there was no holding of domestic enquiry or issuance of charge sheet, it was held that termination is bad in law and cannot be legally sustained. In Bhuvanesh Kumar Dwivedi Vs. Hindalco (2014 SLT 392) Hon'ble Apex Court dealt with the question of termination of service and payment of back wages etc. alongwith other consequential benefits. In the said case, there are clear cut observations that the workman has rendered continuous services and termination of service is in derogation to the provisions of Section 25F of the Act and without holding any proper enquiry, such order cannot be legally justified and workman is liable to be reinstated with back wages. Same view appears to have been taken by the Hon'ble Apex Court in the case of State of UP vs. KM Shashi Joshi (2015 LLR 158). It is held that termination of the workman vide order dated 20.07.2010 Ex.WW1/4 is legally not justified as the same is in violation of provisions of the Industrial Disputes Act 1947 as well as principles of natural justice.

9. As a sequel to the above, it is held that the workman herein, Shri Jaswant Singh, is also entitled to be reinstated with full back wages. An award is accordingly passed. It be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

August 5, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 11 अगस्त, 2016

का.आ. 1760.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राम मनोहर लोहिया हॉस्पिटल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 150/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2016 को प्राप्त हुआ था।

[सं. एल-42011/52/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 11th August, 2016

**S.O. 1760.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 150/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Ram Manohar Lohia Hospital and their workman, which was received by the Central Government on 10.08.2016.

[No. L-42011/52/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

**I.D. No. 150/2012**

The General Secretary,  
Health Services Contract Workers Union,  
Dr. Ram Manohar Lohia Hospital, K-45,  
Srinivaspuri,  
New Delhi – 110 065

...Workman

#### **Versus**

The Medical Superintendent,  
Ram Manohar Lohia Hospital,  
New Delhi 110 001

...Management

#### **AWARD**

A reference was received from Ministry of Labour and Employment vide letter No.L 42011/52/2015-IR(DU) dated 17.06.2015 under Section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) by this Tribunal to decide the reference, terms of which are as under:

‘Whether the action of the management of Dr. R.M.L. Hospital in not paying the same salary to the twenty one Lower Division Clerks appointed in 2010 on contract basis as per the list enclosed as paid to the regular LDCs of the Hospital is legal and justified? If not, what relief are those 21 LDCs entitled to?’

2. Both parties were put to notice after receipt of the above reference and the workman union filed statement of claim wherein it is averred that the workman herein, 21 in number, are members of the Union and they were engaged on contract basis and Shri Ram Kishan is the General Secretary of the said union, who is duly competent and authorized to raise the dispute. There are averments that the workmen were working as Lower Division Clerks (in short LDC) on contract basis with the management from the dates indicated against their names in Annexure A. In fact 12 of the workmen had joined services of the management on 31.12.2010, 1 workman on 30.06.2008 and remaining 8 on 01.02.2011. They have been working continuously without any break in service.

3. It is the case of the workmen that they are working as LDC and being paid wage much lower than the permanent employees in the management of the hospital, who are performing the same task and also designated as LDCs. In this regard, workmen made a joint representation on 21.03.2013 and called upon the management to increase their wages and make them equal with their permanent counterparts. Subsequently, the workmen through their union raised an industrial dispute before the Conciliation Officer. However, conciliation efforts failed, resulting in making of the above reference to this Tribunal by the appropriate Government. As per their averments, LDCs are performing clerical work which is being performed by permanent workmen and the same is of similar nature. There is no difference at all between the work being performed by the contractual workers as per Annexure A and those employed by the management on permanent rolls. However, there is a huge difference in the pay and perks of the contract workers and permanent workers. Contract workers are being paid only an amount of Rs.7730.00 per month whereas regular LDCs working as permanent employees are getting Rs.16,575.00,. There are other additional benefits like leave benefits,

LTC, annual increments, medical facilities etc. enjoyed by the permanent workmen. As per provisions of Contract Labour (Regulation and Abolition) Act, 1970, there should be no difference between the wages being paid to contract workman vis-à-vis the permanent workmen. There are other authorities of the courts on the point. The contract workers are being burdened with inhuman work load. Finally, prayer has been made or passing an award in favour of the workmen so as to award them equal wages @ salary/wages paid to regular LDCs of the management.

4. Notice was issued to the management, but none appeared on behalf of the management, as a result of which management was proceeded ex-parte vide a order dated 05.04.2016.

5. Workmen, in support of their case, examined Shri A.K. Sondhi as WW1 and his affidavit is Ex.WW1/A. Averments in the affidavit are para material with the averments contained in the statement of claim. He has also tendered in evidence documents Ex.WW1/1 to Ex.WW1/10. Workmen also examined Shri Ram Kishan as WW2 and his affidavit Ex.WW2/A is also on the same lines.

6. I have heard Shri N.A. Sebastian, A/R for the workman union.

7. The main contention on behalf of the workman union is to the effect that contract workers are performing similar nature of duties and are rather doing work more than the permanent workmen who are employed by the management. As such, case of the workmen union has been espoused vide Ex.WW1/1 when a meeting of the union took place and demands of the workmen regarding equal payment (salary) was raised. WW1/2 is the minutes of the meeting with the General Body meeting of the Health Services Contract Workers Union, which also shows that in the said meeting it was decided that matter regarding disparity of wages of the contract workmen be raised at par with the Government employees. WW1/3 is the memorandum, which in fact is offer of appointment on contractual basis to the LDCs working in Ram Manohar Lohia Hospital, New Delhi. It is clarified in the said memorandum that appointment is purely on contractual basis and consolidated salary of Rs.7730.00 would be paid for each calendar year. It is not out of place to mention here that appointment of the casual workers was on minimum scale but from time to time same was extended by the management. There is a letter Ex.WW1/4 addressed to the Medical Superintendent of RML Hospital wherein demand has been raised for increase in the wages of the workmen as mentioned in the list of workmen attached alongwith the letter. Letter Ex.WW1/5 is issued by the Government of India, which deals with extension of services of eh workmen herein who were working as LDCs. Names of the 21 workmen herein are mentioned in the said letter. It is clear from Para 2 of the letter that process of filling of the said vacant post on regular basis has been initiated and this appears to be on the basis of request made by the workmen herein vide letter Ex.WW1/6, wherein request for regularization of the LDCs working on contract basis was made. There is another letter Ex.WW1/7 by the Deputy Director: Administration to Deputy Director, Ministry of Health and Family Welfare wherein it has been stressed that a holistic view with regard to regularization of services of LDCs on regular basis is required to be taken as they have been working for a long time and that most of them were directly recruited in 2010 by RML Hospital.

8. Now, the vital question which requires determination is whether the workmen herein, who are working on contract basis as LDC since 2010, are entitled to the same salary which regular workmen working on the same post are getting. It is clear from averments contained in the statement of claim as well as affidavits Ex.WW1/A and Ex.WW1/B that the workmen herein are admittedly getting far less wages than their regular counterparts working on same post. In fact, as discussed above, LDCs on contract basis is getting consolidated amount of Rs.7730.00 while the permanent workers working on their rolls are getting more than Rs.24000, including dearness allowance, house rent allowance, transport allowance etc.

9. Question of equal payment of wages of the contract workers was considered by the Hon'ble High Court of Delhi in the case of Dr. Ram Manohar Lohia Hospital vs Yogesh Kumar decided on 08.01.2016. In the said case, respondent was working as Para medical staff, i.e. Lab Assistant/Lab Technician etc. and they were getting less pay than their regular counterparts. The workman approached the High Court for issuance of directions to give them consolidated pay at par with the minimum granted to the regular employees performing the same job. The management has opposed the plea of the workman but Hon'ble High Court placed reliance upon the case of Victoria Massey, National Capital Territory of Delhi and others as well as Deen Dayal Upadhyay Hospital Vs. Mahesh Bhardwaj decided on 15.02.2013 and held that the workmen who are performing similar jobs like their regular counterparts on similar posts are entitled to equal payment of wages like regular workmen. In the said case, plea regarding grant of increments appears to be rejected by the Hon'ble High Court for the reason that the workmen working on contract basis had not been regularized.

10. Reliance was also placed upon the judgement of Delhi High Court in the case of Dr. Baba Sahib Ambedkar Hospital Vs. Swastika Bhakat and others decided on 24.05.2013 wherein question of parity or difference of salary between contractual nurses and regular nurses was considered and it was held that nurses working on contract basis are entitled for services benefits at par with regular nurses.

11. There is another judgement titled Government of NCT of Delhi vs Dipika S Kumar wherein also similar question of payment of salary of contract nurses vis-à-vis regular nurses was considered and it was finally held that there cannot



be any quarrel with the proposition of law that nurses who are initially recruited on contract basis were performing the same jobs as their regular counterparts are performing. As such, they are also entitled to those benefits to which regular/permanent staff is entitled. Though in the said judgement, it was also clarified that casual or contractual employees are not entitled for increments and they would get pay at minimum of regular pay scale.

12. Thus, it is clear from the ratio of law discussed above that the workmen herein are entitled to salary and allowances at par with their regular counterparts who are working with the management on the same post. It is not out of place to mention here that there is no break in service of the workmen herein since the time of their employment on contract basis and admittedly nature of the job of the workmen herein is the same as that of the regular workmen who are posted as LDCs with the management.

13. As a sequel to my above discussion, it is held that action of the management of RML Hospital in not paying sale salary to 21 workmen (LDCs), as per list annexed with the reference, on contract basis at par with their regular counterparts (LDCs) of the same hospital is not legal and justified and resultantly, they are entitled for same salary like the regular LDCs doing the same job. An award is accordingly passed. It be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

August 5, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 16 अगस्त, 2016

**का.आ. 1761.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 28/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.08.2016 को प्राप्त हुआ था।

[ सं. एल-20012/252/2004-आईआर (सीएम-1) ]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th August, 2016

**S.O. 1761.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 28 of 2005) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.08.2016.

[No. L-20012/252/2004-IR (CM-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

**PRESENT :** Shri R.K.Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

#### REFERENCE NO 28 OF 2005

**PARTIES :** The Vice President,  
Rastriya Colliery Mazdoor Sangh,  
Rajendra Path, Post Box No.22.Dhanbad.

**Vs.**

The General Manager,  
C.V. Area of M/s BCCL, PO: Barakar, Distt: Burdwan,  
Order No. L-20012/252/2004-IR(C-I) dt.24.3.2005

#### APPEARANCES :

On behalf of the workman/Union : Mr N.G. Arun, Ld. Rep. of the Union,  
On behalf of the Management : Mr S.N.Ghosh, Ld. Advocate .

State : Jharkhand

Industry : Coal

Dhanbad, Dated the 18<sup>th</sup> June, 2016**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/252/2004-IR(C-I) dt. 24.3.2005.

**SCHEDULE**

“Whether the demand of the Rashtriya Colliery Mazdoor Sangh from the Management of Dahibari Colliery under C.V. Area of M/s BCCL for regularization of Smt Mangli Murmu, General Mazdoor Cat. I as peon is justified? If so, to what relief is Smt. Mangli Murmu entitled and from what date?”

None from either party is reported to be present on date nor did file the long awaited documents, in question. The case fixed on filing documents by both the parties, which appears to have been pending since 20.01.2006. Nevertheless, there has been subsequently sufficient times availed of by both of the parties with no signs of action seem visible. Neither the Union Representative nor the workman appeared on date nor did file documents on their part. The case deals with regularization of the workman, from Cat.-I Mazdoor to Peon as raised by his Sponsoring Union from the Management.

From perusal of the case records, it stands clear that the workman/petitioner or his Representative concerned seems uninterested to go in for the finality of the case through adjudication rather it has lost the merits, as of now. As such proceedings have been abruptly come to a grinding halt over filing of documents due to disinterestedness of the Union/workman. On this count, the Tribunal cannot be mute spectator to let the situation crawl for a long spell of time rather pushing it for final closure in the natural interest in presumption of non-existence of issue in real sense. So the case is wrapped up as no Industrial Dispute. Accordingly an ‘Award of No Dispute’ is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 अगस्त, 2016

**का.आ. 1762.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 25/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.08.2016 को प्राप्त हुआ था।

[सं. एल-20012/260/2004-आईआर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th August, 2016

**S.O. 1762.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad (Ref. No. 25 of 2005) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.08.2016.

[No. L-20012/260/2004-IR (CM-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD****PRESENT :** Shri R.K.Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

**REFERENCE NO 25 OF 2005**

**PARTIES :** The Secretary,  
Bihar Colliery Kamgar Union,  
Poddar Para, Jharia, Distt: Dhanbad.

**Vs.**

The Project Officer,  
Sudamdih Incline Mines of M/s BCCL  
PO: Sudamdih, Distt; Dhanbad.

Order No. L-20012/260/2004.IR (C-I) dt. 24.03.2005

#### APPEARANCES :

On behalf of the workman/Union : Mr. S.N. Ghosh, Ld. Advocate

On behalf of the Management : Mr. U.N. Lal, Ld. Advocate

State : Jharkhand

Industry : Coal

Dhanbad, Dated : the 13<sup>th</sup> June, 2016

#### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/260/2004.IR (C-I) dt. 24.03.2005.

#### SCHEDULE

“Whether the action of the Management of Sudamdih Incline Mine of M/s BCCL in dismissing Sri Ram Kumar Munda, Miner Loader from the services of the Company w.e.f. 8.2.2003 is justified? If not, to what relief is the concerned workman entitled?”

2. Neither Representative nor the workman himself appeared on date .The case stands for order based on evidence on preliminary point. Despite three notices dt. 20.06.2005, 12.02.2015 and 16.08.2015 by the Registered post to the workman and the Management as well ,neither the workman nor his Representative made appearance on either part .The case pertains to dismissal of the workman by the Management of BCCL of Sudamdih Incline Mine, Dhanbad. Contrary to it, Mr. U.N. Lal, the Ld. Advocate for the Management got registered his presence not even for this time but all along since inception of the case.

Barring a few appearances on the workman's part since the very beginnings, the case usually drew almost flak just because disinterestedness as shown by the workman before the case arrived status of evidence of the Management together with posting of hearings frequently .To sum up the case, Tribunal too did not confront of the view that the workman is least interested in the case to get it to finality through adjudication rather maintained the deep silence since long even after providing sufficient opportunity to come out in defence .The conduct and manner the workman walks drops enough hints to suggest to continue it of no use in the natural justice .Under such circumstances, the case is wrapped up and closed as No Dispute Award exits as of now between the parties concerned .Accordingly an order of 'No Dispute Award' is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1763.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 81/12) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-12011/24/2012-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1763.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/12) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19.08.2016.

[No. L-12011/24/2012-IR (B-I)]

RANBIR SINGH, Section Officer

**ANNEXURE**  
**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,**  
**JABALPUR**  
**NO. CGIT/LC/R/81/12**

General Secretary,  
Dainik Vetan Bhogi Bank Karamchari Sangathan,  
F-1, Tripti Vihar,  
Opp.Engg. College,  
Ujjain

...Workman/Union

**Versus**

Branch Manager,  
State Bank of India,  
Khatiwala Tank,  
Indore

...Management

**AWARD**

Passed on this 5<sup>th</sup> day of July 2016

1. As per letter dated 18-7-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12011/24/2012-IR(B-I). The dispute under reference relates to:

“Whether the demand of the Union, Dainik Vetan Bhogi Bank Karamchari Sangathan for making payment of full wages as paid to permanent peon for the period from 10-1-01 to 4-12-2010 to Shri Prakash Rathore is legal and justified? To what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim through Daily Wage Bank Employees Union. Case of Ist party workman is that he was engaged as peon by Branch Manager Shri Sunil Bhide on 10-1-01. He was working 8 hours per day. He worked more than 240 days during each of the year. He was paid wages Rs.50 per day. Wages were increased to Rs.70,100,120,140, 170 per day. Wages were paid in name of Rajiv, Dinesh. After workman claimed regularization and benefit of bonus, his services were terminated on 4-12-2010 in violation of Section 25-F of ID Act. Workman challenged his termination raising separate dispute. Workman submits that he is eligible for skilled wages as per 7<sup>th</sup> to 9<sup>th</sup> bipartite settlement. That in chapter 16 of Sastry Award, Para 5 to 8, the employees are classified as Ist party workman was engaged as temporary peon, he is entitled for scale wages. Workman claimed difference of wages as per 7 to 9<sup>th</sup> settlement.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman that workman was engaged temporarily on daily wages at Khatiwala tank branch in erstwhile State Bank of Indore. He was paid wages for his working period. Engagement of workman was as per exigencies, he was not appointed against any post. Workman was not continuously working. Workman is claiming full wages of permanent peon as per bipartite settlement. He is not entitled to pay scale under bipartite settlement. Bipartite settlement normally for period for 5 years are applicable to the permanent employees. Ist party workman was not working 8 hours per day. He is not entitled to scale wages as per 7<sup>th</sup> to 9<sup>th</sup> bipartite settlement. Documents produced by workman donot pertain to persons working on daily wages. On such contentions, 2<sup>nd</sup> party submits that reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the demand of the Union, Dainik Vetan Bhogi Bank Karamchari Sangathan for making payment of full wages as paid to permanent peon for the period from 10-1-01 to 4-12-2010 to Shri Prakash Rathore is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

**REASONS**

5. The terms of reference pertains to claim of Ist party for full wages of permanent peon. Claim of workman is opposed by management Bank in Written Statement. Workman filed affidavit of his evidence but failed to appear for his cross examination. Therefore his evidence cannot be considered.

6. Management's witness Shri Soumyashree Debashish Mishra in his affidavit of evidence states that bipartite settlement are not applicable to persons engaged on temporary basis. The settlements are applicable only to permanent subordinate staff. Ist party was not working for 8 hours per day. In his cross-examination, management's witness was unable to tell who was working as peon, daftary, cash peon during the period 2001 to 2010, how many daily wage employees were working and wages were paid to them. Policy about payment of wages is not produced. Workman was paid wages under voucher. Management's witness was unable to tell how many days Ist party workman had worked. Chart of working is not produced. As evidence of workman could not be considered as he failed to appear for his cross-examination, there is no evidence to support his claim. He was working in Bank from 2001 to 2010- 8 hours per day. Copy of 8<sup>th</sup> Bipartite Settlement is brought to my notice by counsel for 2<sup>nd</sup> party Shri Shroti. The settlement deals with para 21 of settlement deals with part time employees. Settlement is absolutely silent about payment to the daily wage employees. Workman has not produced copies of 7<sup>th</sup>, 8<sup>th</sup> settlement. Therefore claim of workman for difference of wages is not substantiated by evidence.

7. Learned counsel for 2<sup>nd</sup> party Shri Shroti relies on ratio held in

Case of State of Haryana and another versus Tilak Raj and others reported in 2003(6)SCC-123. Their Lordship dealing with the daily wage employees claiming parity in employment held principle not an abstract one. Applicability of the principle requires complete and wholesale identity between a group of employees claiming identical pay scales and others who have already earned such pay scales. Respondent daily workers are not entitled to claim equal pay for equal work on parity with the regular employees.

For the reasons discussed above, I record my finding in Point No.1 in Negative.

8. In the result, award is passed as under:-

- (1) The demand of the Union, Dainik Vetan Bhogi Bank Karamchari Sangathan for making payment of full wages as paid to permanent peon for the period from 10-1-01 to 4-12-2010 to Shri Prakash Rathore is not legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1764.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 230/97) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-41012/112/96-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1764.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 230/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Central Railway and their workmen, received by the Central Government on 19.08.2016.

[No. L-41012/112/96-IR (B-I)]

RANBIR SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/230/97

Shri Ganesh Prasad Jagganath,  
Vill & PO UDA Harda,  
Distt. Hoshangabad (MP)

... Workman

**Versus**

Divisional Railway Manager,  
Central Railway,  
Habibganj, Bhopal

...Management

### AWARD

Passed on this 21<sup>st</sup> day of June 2016

1. As per letter dated 5-8-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/112/96-IR(B). The dispute under reference relates to:

“Whether the action of the management of Divisional Railway Manager(P) C.Rly., Bhopal/ Bhusawal in terminating the service of Shri Ganesh Prasad S/o Shri Jagannath w.e.f. 3-5-88 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman failed to submit statement of claim. Consequently the award was passed on 8-1-04. As per order in A/3/05, reference proceeding was restored. Workman was allowed to file statement of claim. Ist party had filed statement of claim. Case of Ist party workman is that he was initially employed as Khalasi on 20-11-82. He continuously worked from 20-11-82 to 3-5-88 as monthly rated casual worker. His services were terminated without complying provisions of Section 25-F of ID Act. He was not served with notice. Salary in lieu of notice was not paid, retrenchment compensation was not paid to him despite he worked for more than 240 days during last 12 months preceding his termination. Ist party workman further contented that junior persons to him were retained in violation of Section 25-G of ID Act. Policy of last come first go was not followed. Railway Board issued several circulars for regularization of casual employees who worked beyond 3 years. Despite he completed requisite number of years, he was not extended benefit of Railway Board Circulars. Workman reiterates he was continuously working but his services were not regularized. Permanent status was not granted to him. His services were terminated without giving opportunity of hearing. Termination of his service is violative of Article 14 & 21 of the constitution. On such ground, workman prays for his reinstatement with full back wages.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman. Preliminary objection is raised that dispute is raised after 26 years is not filed within time. The award was passed on 8-1-04. Workman filed application for restoration and finally statement of claim is filed on 29-5-14 barred by limitation. That workman is neither retrenched nor terminated by the management. Workman left the job himself for reasons known to him. 2<sup>nd</sup> party reiterates that workman was not retrenched or terminated by management. He himself claimed the job. Compliance of Section 25-F of ID Act doesnot arise. Violation of Section 25-G of ID Act is denied. Workman remained absent from job. He is not entitled to any relief. Workman should prove retrenchment or termination of his service by the management. The name of workman is not based on specific ground. The facts narrated by workman is devoid of merit.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Divisional Railway Manager(P) C.Rly., Bhopal/ Bhusawal in terminating the service of Shri Ganesh Prasad S/o Shri Jagannath w.e.f. 3-5-88 is justified?	Termination of services by workman is not established.
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

### REASONS

5. The term of reference pertains to legality of termination of services of workman from 3-5-88. Management has denied claim of Ist party workman. Workman filed affidavit of his evidence. Workman in his affidavit of evidence has stated that he was working as Khalasi from 20-11-82 till 3-5-88 for 5 years 5 months and 13 days. His services were terminated without notice, he was not paid salary in lieu of notice, retrenchment compensation was not paid to him. He worked more than 240 days during each of the calendar year. From evidence of workman, documents Exhibit W-1 to W-3 are admitted in evidence. Workman in his cross examination says he was appointed in 1982 at the age of 18 years. He was working as Gangman. The details of his working is shown in Exhibit W-1. In 1988 he was paid salary of Rs.1200, in 1983-84 he raised the dispute after termination of his service, he was working as labour. His services were not regularized. Document W-1 is casual labour card, working days of Ist party are recorded in it. Exhibit W-1 also finds endorsement about medical examination passed by workman on 15-3-84. Working days shown in Exhibit W-1 preceding date of his termination 3-5-88 comes 195 days. Workman worked more than 240 days preceding 12 months

of termination of his service is not corroborated by document W-1. Witness of Ist party Shri Ganpat Uike , Jagannath Prasad in their affidavit of evidence tried to corroborate evidence of Ist party workman that he worked more than 240 days preceding 12 months of termination of his services. Ganpat in his cross examination says he doesnot know whether workman was paid retrenchment compensation or not. Jagnath Prasad in his cross examination says he and workman are resident of same village. Ist party workman did not give information about his claim to him. He had not seen any document about service of workman. As document W-1 maintained by the Railway relied by workman shows that working days 12 months preceding termination are only 195 days. The evidence of workman and his witnesses about working more than 240 days service cannot be accepted. Workman has failed to establish that he worked more than 240 days preceding 12 months of his service.

6. At the time of argument, learned counsel for Ist party Shri Salunke submitted that workman had worked more than 125 days during six months. That as per Section 25 B of ID Act, workman is covered as an employee. Section 25 B defines continuous service. As per Section 25 B(2) of ID Act, it is provided-

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and (ii) two hundred and forty days, in any other case; (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than- (i) ninety-five days, in the case of a workman employed below ground in a mine; and (ii) one hundred and twenty days, in any other case.

Section 25-F provides-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

Section 25-F clearly provides continuous service not less than one year under the employment. Section 25-F doesnot provide completion of six months salary as provided under Section 25 B (2)(b).

7. The evidence on record is clear that workman had not completed 240 days continuous service preceding 12 months of his termination as recorded in Exhibit W-1. Exhibit W-2 is certificate issued by the management that shows that workman was discharged from service from 3-5-88 due to no sanction available. Exhibit W-3 is fitness certificate of workman. As workman has not completed 240 days continuous service preceding 12 months of his termination, he is not entitled to protection under Section 25-F of ID Act. For above reasons, I record my finding in Point no.1 in Affirmative.

8. Point No.2- In view of my finding in Point No.1 workman has failed to prove 240 days working preceding termination of his service is not entitled to protection under Section 25-F of ID Act. Termination of workman cannot be said illegal. Therefore workman is not entitled to any relief.

9. In the result, award is passed as under:-

- (1) Action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1765.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 17/07) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-12012/163/2005-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1765.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/07) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19.08.2016.

[No. L-12012/163/2005-IR (B-I)]

RANBIR SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/17/07

General Secretary,  
SBI SC/ST/OBC Karamchari Kalyan Parishad,  
9, Sanwer road,  
Ujjain (MP)

...Workman/Union

#### Versus

Dy.General Manager,  
State Bank of India,  
Zonal Office, Hamidia road,  
Bhopal

...Management

#### AWARD

Passed on this 7<sup>th</sup> day of June 2016

1. As per letter dated 19-1-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/163/2005-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Dy.General Manager, State Bank of India by not considering the case of Shri Naval Kishore S/o Late Madanlal Bhartiya for providing him compassionate appointment is justified? If not, to what relief Shri Naval Kishore is entitled for?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim through Nationalised Bank Employees Union, Ujjain. The case of Ist party workman is that father of workman was appointed against vacant post of peon/messenger on 16-5-79. His father was working with honest and devotion. His father was promoted as messenger in Hamara branch of State Bank, Distt. Bhopal. On 6-12-02, the father of claimant died by heard attach leaving his widow Saraswati, age 45 years, Naval Kishore, 22 years- claimant, Sunita, Pinki, Munni-daughters, Mangal Singh- Grand father and Prembai- grandmother. After death of his father, Asstt. General Manager of State Bank had given letter dated 13-12-02 expressing brief after death of his father and advancing to submit application for employment on compassionate ground. Ist party had submitted application for compassionate appointment in proper proforma. Vide letter dated 19-4-04, he was informed that his application for employment on compassionate ground was rejected. Ist party submits that he had approached to backward Class Welfare Council and MPSC ST Commission. The concerned authorities had requested Bank to preside his claim generously.

3. Ist party further submits that on death of Dayaram Lobia, the settlement with the Bank was finalized for amount of Rs.3 Lakhs exgratia amount. Ist party submits that after death of his father, there is no source of earning in his family. Pension amount is 30 % of pay. Exgratia amount was not paid to him after death of his father. On such contentions, Ist party prays for appointment on compassionate ground.



4. 2<sup>nd</sup> party filed Written Statement opposing claim of Ist party for appointment on compassionate ground. 2<sup>nd</sup> party raised preliminary objection that Ist party is not covered as workman as the compassionate appointment is claimed as son of deceased employee. Said claim is not covered as industrial dispute under Section 2k of ID Act. The dispute under reference is not maintainable.

5. 2<sup>nd</sup> party further submits that provision of compassionate appointment is to enable the family of deceased employee to reside over sudden crisis resulting due to death of bread earner. The family is left without means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, the provision is made for giving gainful appointment to one of the dependents of the deceased. Such a provision enables appointment being made without following the procedure, it is in nature of an exception to general provisions. The benefit has therefore to be confined within four corners of the scheme. Bank has framed scheme for appointment on compassionate ground to the dependents of employees died in harness for such objects. Clause I of the scheme also provides factors to be taken into account for determining family condition of family- family pension. Gratuity amount received, employees contribution to PF, any compensation paid by the Bank, proceeds of LIC policies and other investments of deceased employees. Income of family from other sources, income of other family members, size of family and liabilities if any. 2<sup>nd</sup> party submits that Late Madanlal was working as Head Messenger at Dhamarra branch of the State Bank of India. He expired on 6-12-02 leaving behind his widow and a son. That application was submitted by Ist party for compassionate appointment. It was found that financial condition of the family is not penurious which warrants appointment on compassionate appointment. The request of Ist party was therefore rejected. The decision was informed to Ist party on 19-4-04. The details of financial position are shown in Written Statement. The PF Amount Rs.2,49,558/-, Gratuity Rs.114119, Leave encashment- Rs.73032, Assistance from KSSS Rs.1,00,000/-, Other Assets – Rs.1,11,650/- Total 6,48,359/-. The Liabilities left by deceased were Personal Loan- Rs.21,183/-, Housing Loan- Rs.15,346/-, Other demand loans- Rs.35,82/-= Total Rs.72,341/-. 2<sup>nd</sup> party submits after adjusting liabilities of deceased, family of deceased received Rs.5,76,018/-. The notional income of the 80 % @ 6.5% comes to Rs.2496/-. The family was being paid family pension of Rs.2982/-. Thus after death of employ the monthly income of family comes to Rs.5478/-. Last take home salary of deceased employee was Rs.6258/-. The family cannot be said without means of livelihood. The appointment on compassionate ground is not deserved. 2<sup>nd</sup> party reiterates that the Competent Authority after due consideration rejected application for compassionate appointment as per the scheme prevailing. It is denied that income of family was less than 50 % of the salary received. The scheme for compassionate appointment was abandoned in Bank. It was replaced by new scheme known as Scheme for payment of Exgratia lumpsum amount to the dependents of the deceased. Later on the scheme of exgratia amount was revised vide circular dated 7.7.2011. All the cases including case of Shri Lohiya in which earlier the request was declined were reconsidered. Shri Lohiya was found eligible for payment of 50 % of the exgratia lumpsum amount. Accordingly he was paid sum of Rs. 3 Lakh. Ist party doesnot get any help from the case of Shri Lohiya in as much as the case of Ist party was already rejected much prior to coming into force of new scheme. On such ground, 2<sup>nd</sup> party prays that reference be answered in its favour.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Dy.General Manager, State Bank of India by not considering the case of Shri Naval Kishore S/o Late Madanlal Bhartiya for providing him compassionate appointment is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

7. The term of reference pertains to denial of compassionate appointment to Ist party Naval Kishore. The term of reference doesnot include denial of exgratia amount. The documents produced by Ist party Exhibit W-1 to W-8 are admitted by 2<sup>nd</sup> party management. Workman has not adduced evidence in support of his claim. Management also did not examine any witness. Copy of scheme for compassionate appointment is produced at Exhibit M-1. The dispute under reference therefore requires to be decided on the basis of documentary evidence. Exhibit W-1 is copy of appointment order of father of Ist party dated 16-5-79. W-2 is copy of death certificate shows Madan lal dies on 6-12-02. W-3 is letter dated 13-12-02 given by Assistant General Manager advising family to submit application in prescribed proforma for compassionate appointment. Exhibit W-4 is copy of application submitted by Ist party, his qualification is shown 8<sup>th</sup> standard, married having two children. Exhibit W-5 is statement of assets and liabilities of the Ist party- PF Amount Rs.2,49,558/-, Gratuity Rs.114119, Family pension- 2982/-, Leave encashment- Rs.73032, Assistance from KSSS Rs.1,00,000/-, Fixed deposit-6000, shares 530/-, NSX Rs.47430. The Liabilities left by deceased were Personal Loan- Rs.21,183/-, Housing Loan- Rs.15,346/-, Other demand loans- Rs.35,82/-=Exhibit W-6

is intimation given to Ist party about rejection of his application for compassionate appointment. Exhibit W-7 is letter issued by General Manager rejecting application for compassionate appointment. Exhibit W-8 is notice of conciliation proceeding. W-9 is letter dated 31-12-04 rejecting claim for compassionate appointment.

8. As stated above, both parties have not adduced oral evidence. The copy of the scheme for appointment on compassionate ground produced at Exhibit M-1. Para 10 provides factors to be taken into account for determining the financial condition of the family as disclosed in the written statement. Exhibit W-1 doesnot provide for payment of exgratia amount. Workman has not produced any document in support of his claim for payment of exgratia amount neither any evidence is adduced on the point.

9. Considering the death amount received by the family, family also owns house, motorcycle, 2<sup>nd</sup> party submits that claim of Ist party for compassionate appointment is not deserved. Learned counsel for 2<sup>nd</sup> party Shri Amit Nagpal on the point relied on ratio held in

Case between State Bank of India and another versus Somvir Singh reported in 2007(4)SCC-778. Their Lordship of the Apex Court dealing with judicial review of compassionate appointment only where deceased employee left his family in penury or without any means of livelihood. Where competent authority of the Bank on consideration of all the relevant factors for assessing financial condition of the deceased employees family found that the family was not in penury and without any means of livelihood held interference by High Court was not justified.

Exhibit W-5 shows that dependent of deceased received amount more than 5 Lakhs. No evidence in rebuttal is adduced by Ist party. Considering the scheme Exhibit M-1, claim of Ist party workman for compassionate appointment is not justified. For above reasons, I record my finding in Point No.1 in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1766.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 193/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-41012/164/2000-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1766.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 193/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Central Railway and their workmen, received by the Central Government on 19.08.2016.

[No. L-41012/164/2000-IR (B-I)]

RANBIR SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/193/2000

Shri Shivram S/o Kanchedi,  
Ex-Gangman, Vill. Mahgama,  
Post Khalani, Police Station,  
Salimanabad,  
Tehsil Sihora,  
Distt. Jabalpur

...Workman

**Versus**

Divisional Railway Manager,  
Central Railway,  
Jabalpur (MP)

...Management

**AWARD**

Passed on this 13<sup>th</sup> day of May, 2016

1. As per letter dated 3-7/11/2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/164/2000/IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Divisional Railway Manager, Central Railway (MP) in terminating the services of Shri Shiv Ram S/o Shri Kancheddi, Ex Gangman, PWI Gotegaon(Sridham) w.e.f. 4-1-96 is justified? If not what relief the concerned workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1 to 3/4. Case of workman is that he was employed as Gangman in Unit 6 of PWI Gotegaon. Workman reported sick to Railway Hospital Narsinghpur on 11-10-94. Thereafter he was taken to his village and remained in village till 22-1-95. There was no Government hospital. After workman was cured, he submitted certificate from Railway Doctor, Narsinghpur. Workman was issued chargesheet for unauthorized absence from 11-10-95 to 22-1-95. After holding enquiry, he was removed from service vide order dated 22-12-98. Workman submits that enquiry was not properly conducted, he was not allowed opportunity for his defence. The findings of Enquiry Officer are perverse. Workman was not unauthorized absent. He was suffering from illness and unable to attend duty. He was not supplied copy of Enquiry Report. On such ground, workman prays and submits that order of punishment is illegal and he be reinstated.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman. No objection is raised by 2<sup>nd</sup> party that penalty was imposed against workman for proved unauthorised absence of 104 days. Workman not submitted explanation about his unauthorized absence. Reference is not tenable. 2<sup>nd</sup> party further submits that chargesheet was issued to workman for unauthorized absence are given in para-4 of Written Statement.

4. Workman had acknowledged chargesheet. He was allowed assistance of other Railway employees for his defence. Enquiry was conducted in presence of workman giving him full opportunity for defence. Workman was informed about enquiry. He attended Enquiry Proceeding. Showcause notice was issued to workman. Punishment was imposed considering workman was habitually remaining absent was proved. 2<sup>nd</sup> party prays that order of punishment is legal, reference be answered in its favour.

5. Rejoinder is filed by workman reiterating his contentions in statement of claim.

6. As per order dated 8-8-2015, enquiry against workman is found proper and legal.

7. Considering pleadings on record and order on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(iii) If not, what relief the workman is entitled to?”	As per final order.

**REASONS**

8. Point No.1 Enquiry conducted against workman is found proper and legal. Point whether the charges against workman are proved against workman needs to be decided considering evidence in Enquiry Proceedings. The documents produced by workman Exhibit W-1 to W-7 pertaining to the enquiry and order of punishment. Documents of enquiry conducted against workman are produced at Exhibit M-1. Chargesheet was issued to workman for unauthorized absence from 11-10-94 to 22-1-95 for 140 days. Page5 of Enquiry Proceedings Exhibit W-1 shows Q.4 asked to workman about his unauthorized absence for 104 days. Workman admitted to be proved. In reply to Q.5, workman replied that he had not given intimation about his absence as he was not keeping well. He was mentally ill. He had submitted medical certificate. In reply to Q.6, workman says he suffered from illness on 4-10-94. He submitted

application for sick leave. Thus workman has admitted his absence. Workman has not produced any document about application for leave submitted to the management therefore charge of unauthorized absence against workman is established. For above reasons, I record my finding in Point No.1 in Affirmative.

9. Point No.2- In view of my finding in Point No.1 charge of unauthorized absence of 104 days is proved, question remains for decision is whether punishment of removal imposed against workman is proper and legal. Workman in his affidavit of evidence has stated that prior to termination of his service, he was in service for 12-15 years. No evidence is produced on record about adverse service record of workman prior to punishment of removal imposed against workman. While imposing punishment of removal from service for unauthorized absence for 104 days, the length of service was not taken into consideration.

10. Shri A.K.Shashi, counsel for management relied on ratio held in case of

New India Assurance Co.Ltd versus Vipin Beharilal Srivastava reported in 2008-3-SCC-446. Their Lordship have considered the proper mode for obtaining sick leave. Their Lordship held sick leave can be granted only on production of medical certificate from practitioner. There is no evidence that it is furnished by workman. The order of removal from service for unauthorized absence for unauthorized absence was not interfered. In above cited case, workman was unauthorisely absent for 600 days.

Even in present case, workman claims that he submitted sick leave but no such record is produced. However unauthorized absence in present matter is of 104 days. Evidence of workman that he was serving with 2<sup>nd</sup> party for 12-15 years remained unchallenged. Order of removal from service appears harsh. Shri A.K.Shashi also relied on ratio held in AIR-2010-SC-75. Their Lordship dealing with powers of High Court, the delinquent admitted charges conclusion arrived by Enquiry Officer about proof of charges, presence of any illegality in conduct of DE. It has to be held that charges against workman stands proved.

Evidence in present case, from evidence in Enquiry Proceedings, charges against workman for unauthorized absence are proved. The ratio held in the case cannot be beneficially applied for deciding the quantum of punishment.

11. Reliance is also placed by Shri A.K.Shashi reported in

Delhi Transport Corporation versus Sardar Singh reported in AIR-2004-SC-4161. Their Lordship dealing with Section 11-A of ID Act held Tribunal has not considered entire matter regarding misconduct. The matter was remitted back to Tribunal. I have already answered Point No.1 in Affirmative that charges against workman are proofed. In my considered view, for unauthorized absence for 104 days, punishment of removal from service is harsh as length of past service was not considered. The order of removal needs to be modified to compulsory retirement. Accordingly I record my finding in Point No.2.

12. In the result, award is passed as under:-

- (1) The action of the management is not proper.
- (2) Punishment of removal is modified to compulsory retirement. Workman be allowed retiral benefit as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1767.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 68/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-12012/211/98-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1767.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19.08.2016.

[No. L-12012/211/98-IR (B-1)]

RANBIR SINGH, Section Officer

**ANNEXURE**  
**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,**  
**JABALPUR**  
**NO. CGIT/LC/R/68/99**

Shri Shatrudhanlal Yadav,  
 S/o Shri Sukhiram Yadav,  
 Vill Baroda,  
 PO G.S.I via Mandhar,  
 Distt. Raipur

...Workman

**Versus**

Asstt. General Manager,  
 State Bank of India,  
 Region-I, Zonal Office,  
 Raipur

...Management

**AWARD**

Passed on this 8<sup>th</sup> day of June 2016

1. As per letter dated 22-1-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/211/98-IR(B-I). The dispute under reference relates to:

“Whether Shri Shatrudhanlal Yadav, S/o Shri Sukhiram Yadav is a workman under ID Act, 1947. If so, whether he was entitled to notice/ notice pay and compensation before his termination? Whether his termination is justified? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/4. Case of workman is that he was working as messenger in Zonal office Shankar Nagar, Raipur on daily wages from 10-5-84 to 30-10-84. He worked for total 80 days. Thereafter workman was working in SBI Mandhar branch from 1991 to 1994 total 521 days on daily wages as daily wage messenger. That he continuously worked for 261 days in 1994. The certificate is given by Branch Manager, Mandhar. Services of workman were discontinued from 15-6-95 though he had continuously working for more than 240 days. Ist party claims he is workman under section 2(s) of ID Act. Despite workman was continuously working more than 240 days, his services were unblemished. He was not regularized. Workman was called for interview for the post of messenger on 22-2-90 for regular appointment as sub staff. His name was included at Sl.No.112 of the panel list. Workman was working in the bank. He was forcefully paid rs.25 per day. It is alleged to be unfair labour practice. That discontinuation of workman from 15-6-95 without giving one months notice or pay in lieu of notice amounts to retrenchment. He was not paid retrenchment compensation. Termination of his service is illegal for violation of section 25-F of ID act. Termination of his service is also illegal as 2<sup>nd</sup> party had not obtained prior permission of the Central Government. Termination of his service is arbitrary. It amounts to unfair labour practice and victimization. 2<sup>nd</sup> party management adopted hire and fix policy. Termination of his service is in violation of principles of natural justice. Workman was not issued any showcause notice or chargesheet. On such ground workman claims to be entitled for reinstatement with consequential benefits.

3. 2<sup>nd</sup> party management filed Written Statement opposing claim of workman. 2<sup>nd</sup> party submits that it is case of workman that he worked for 80 days during 10-5-84 to 31-10-84. He was interviewed and his name was included in the Waiting List. The panel/ waiting list expired on 31-3-97 as the period of panel expired, workman was disengaged. Workman had not completed 240 days during preceding 12 months of termination of his service. It is further contented that Ist party was engaged by Local Implementation Committee, Mandhar branch of the Bank. He was intermittently engaged for work of coolie and shifting furnitures, stationary of the Bank. He was also filling drinking water from taps, cutting grass, cleaning branch premises. Workman was paid agreed amount for his working days. The engagement of workman by Local Implementation Committee was also intermittent and agreed wages were paid. Violation of Section 25-F of ID Act is denied.

4. 2<sup>nd</sup> party further submits that large number of similar claims were made filing writ petitions before Hon'ble MP High court. By common order dated 24-8-99, writ petition was disposed. Ist party workman had submitted representation dated 7-9-01, the same was considered in the light of order passed by Honble High court. That temporary service put up candidates from 1-7-75 to 14-8-91 was to be returned with for appointment. Since Ist party workman put in only 80 days temporary service till 14-8-91 which was less than number of service of last appointed candidate in same category and recruitment zone, workman could not be absorbed. 2<sup>nd</sup> party has reiterated that the workman had worked for 80 days during the period 10-5-84 to 30-10-84. As per the settlements, workman was called

for interview but he could not be absorbed in Bank service. The panel lapsed on 31-3-97. That workman had not worked more than 240 days during preceding 12 months of his termination, violation of Section 25-F of ID Act is denied. Workman is not entitled for absorption only on the basis of his discontinuance in work. 2<sup>nd</sup> party prays that reference be answered in its favour.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether Shri Shatrudhanlal Yadav, S/o Shri Sukhiram Yadav is a workman under ID Act, 1947, whether he was entitled to notice/ notice pay and compensation before his termination?	In Affirmative
(ii) Whether his termination is justified?	In Negative
(iii) If not, what relief the workman is entitled to?"	As per final order.

### REASONS

6. The term of reference pertains to whether Ist party is workman under ID Act, whether he is entitled to notice pay and compensation before termination of his service. Whether Ist party is entitled to notice and retrenchment compensation are depending on the fact whether he is covered as workman under section 2(s) of ID Act. In his statement of claim, workman has pleaded that he was working as messenger in Zonal Office, Shankar Nagar, Raipur on daily wages. He worked for 261 days in the year 1994. 2<sup>nd</sup> party in written statement has pleaded that Ist party had worked for 80 days as messenger during 10-5-84 to 30-10-84. Workman was called for interview, his name was included in panel list, panel list lapsed on 31-3-97. 2<sup>nd</sup> party has also pleaded that workman was engaged for the work as coolie, shifting furniture, supplying drinking water etc.

7. Workman in his affidavit of evidence has stated that he was working as messenger in Mandhar branch. He was paid daily wages Rs.25/- per day. In his cross-examination, workman says he was engaged by branch Manager Shri S.B.Agrawal, appointment letter was not given to him. In evidence of workman, he was working as messenger is not shattered in his cross-examination. Workman in his cross-examination says in summer of 1984, he was engaged for supplying drinking water on daily wages.

8. The evidence of management's witness is devoted on the point workman worked for 84 days in 1984. Workman was intermittently engaged for work of coolie shifting furniture, stationary, supplying drinking water. Workman was engaged on daily wages. The evidence of Ist party and evidence of management is clear that workman was engaged for doing manual work on hire. The evidence on record clearly established that Ist party workman is covered as workman under section 2(s) of ID Act.

9. Workman had denied in cross examination that he had not worked for 266 days in 1995. Management's witness in his affidavit of evidence has stated that workman had not completed 240 days continuous service. The record about payment of wages and working days must have been maintained by the management, any such documents are not produced on record. I donot find reason to disbelieve evidence of workman that he worked more than 240 days preceding 12 months of his termination. Workman is covered as employee under section 25 B of ID Act. Therefore workman is entitled for 30 days notice of termination or pay in lieu of such notice, payment of retrenchment compensation.

10. Point No.2- the order of reference pertains to legality to termination of service of workman. In view of my finding in Point No.1 workman is covered as workman under Section 2(s) of ID Act, workman was not served with notice, he was not paid retrenchment compensation. The evidence of management's witness that workman was called for interview, his name was included in panel list, the panel list had lapsed on 31-3-97. Workman could not be absorbed as list had lapsed. Panel list is not produced. However as the term of reference pertains to legality of termination of workman, reference doesnot include denial of regularisation of workman. Therefore the aspect about denial of regularisation of workman needs no discussion, the same would be beyond terms of reference. The evidence of workman in his cross examination shows that he worked in the bank from 1991 to 95. He denies that he not worked for 266 days in 1995. So far as evidence of management's witness is by way of denial that workman had not worked for 240 days continuously. The evidence in cross examination of management's witness shows that during 1991 to august 94, he was post at Bijapur. Thereafter he was transferred to Jagdalpur. Management's witness has no personal knowledge. Workman never worked under him. Management's witness has not produced documents about working days and wages paid to workman therefore evidence of workman is preferred to the evidence of management's

witness. The services of workman are terminated without notice, retrenchment compensation was not paid to him. Termination of workman is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

11. Point No.3- In view of my finding in point No.1 & 2, termination of workman is in violation of section 25-F of ID Act. The evidence shows workman was working in the branch from 1991 to 1995 on daily wages. In my considered view, compensation Rs. 75000/- would be appropriate instead of reinstatement. Accordingly I record my finding in Point No.3.

12. In the result, award is passed as under:-

- (1) The action of the management is not proper and legal.
- (2) 2<sup>nd</sup> party is directed to pay compensation Rs.75,000 to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1768.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 134/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-12012/483/98-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1768.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 134/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19.08.2016.

[No. L-12012/483/98-IR (B-I)]

RANBIR SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/134/99

Shri Badrivishal Shukla,  
S/o Shri Kailashpati Shukla,  
643/9B, Saker Nagar,  
Bhopal (MP)

... Workman

#### Versus

Chief General Manager,  
State Bank of India,  
LHO, Hoshangabad Road,  
Bhopal (MP)

... Management

#### AWARD

Passed on this 8<sup>th</sup> day of June 2016

1. As per letter dated 18-3-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/483/98-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, State Bank of India in terminating the services of Shri Badrivishal Shukla S/o Late Shri Kailashpati Shukla w.e.f. 12-4-97 is justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 9 to 17. Case of Ist party workman is that he was engaged as daily wage messenger from 1-10-83. Thereafter he was intermittently engaged since 3-1-84. He had worked for 80 days in MP Nagar branch. He worked for 4 days in Vindyanchal branch. Workman was called for interview in 1989 as per settlement dated 17-11-87. After his successful interview, his name was included in the panel list. Thereafter he was engaged on the work from 17-10-92 till 14-4-97. He worked with devotion. On 17-10-92, he was appointed as messenger in service branch Bhopal. He was working on vacant post of messenger till 12-10-97. He was paid Rs.2300 per month. He was working from 10AM till 5.30 PM as regular employee. Out of 20 employees in the panel list, 19 employees were regularized. Workman was a panel employee. His services were terminated without notice, he was not paid retrenchment compensation, junior employees Veer Singh, Anil Goswami were continued in the Bank. On such grounds, workman prays for his reinstatement with backwages.

3. 2<sup>nd</sup> party filed Written Statement at Page 25 to 45 opposing claim of workman. 2<sup>nd</sup> party submits that workman was employed on daily wages at Vindyanchal and MP Nagar Branch. In 1983-84, he worked for 84 days. Thereafter workman was gain engaged on daily wages. In 1993, he worked for 227 days, 316 days in 1994, 350 days in 1995, 366 days in 1996, in 1997 for 102 days at service branch, Bhopal. Workman was engaged on contract basis as per exigencies. That Ist party worked for 1421 days during 1993 t 1997. That he worked for 102 days in calendar year preceding his non-engagement. The engagement of workman on daily wages ending at end of day. Workman was not continuously working for 240 days, his disengagement is covered under Section 2(oo)(bb) of ID Act. Violation of Section 25-F is denied. Ist party workman not worked for 240 days during any of the calendar year. He is not covered under Section 25 B of ID Act. Workman is not entitled for retrenchment compensation or pay in lieu of notice. It is reiterated that the engagement of Ist party was purely on daily wages as per exigencies. Workman was called for interview as per the settlement between the management and staff federation. Workman was not eligible for permanent employment as per seniority as he worked for 81 days till cut off dated 14-8-91. That as per terms of bipartite settlement, management can have availed only temporary services from empanelled candidates. The panel list was kept alive till March 97 to give permanent employment to empanelled candidates. 2<sup>nd</sup> party submits that contention of workman that he was declared successful after interview is false. 2<sup>nd</sup> party further submits that there are elaborate selection procedure involved for the recruitment. After interview in Feb89, workman was not found eligible for permanent employment as per seniority. Workman was engaged as casual employee on daily wages during January 93 to April 97. Workman had not completed 240 days continuous service. As panel list lapsed, workman was not engaged thereafter. It is reiterated that non engagement of workman doesnot amount to retrenchment. Non-engagement is covered under clause 2(oo)(bb) of ID Act. On such contentions, management prays that reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, State Bank of India in terminating the services of Shri Badrivishal Shukla S/o Late Shri Kailashpati Shukla w.e.f. 12-4-97 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

### REASONS

5. Workman died during pendency of reference. Copy of death certificate produced on record shows that he died on 29-4-06. His widow Kiran shukla is substituted as his LR. Term of reference pertains to legality of termination of deceased workman. Claim for regularisation is not included in the order of reference. Therefore the relief for regularisation pressed on behalf of deceased workman is beyond terms of reference.

6. Affidavit of evidence is filed of widow of workman Kiran Shukla that her husband was working messenger for 84 days in 1983-84. He was also working as messenger from 17-10-92 till 12-4-97, 19 employees from panel list were regularized except her deceased husband. Her husband was paid Rs.2300 per month. He was working whole day. Her husband was terminated without notice , retrenchment compensation was not paid to him. In her cross examination, Kiran Shukla re-affirms that her husband worked for 84 days in 1984, her husband was called for interview in 1989.



Copy of select list is produced at Exhibit M-6. In her further cross-examination, she was unable to tell whether 19 other employees regularized had worked for 60 days. She was unable to tell their caste and other details. She was unable to tell whether her husband had filed affidavit of evidence. Counsel for Ist party made clear that no such affidavit was filed. As term of reference doesnot include relief for regularisation, the detailed discussion of the evidence on the point is unwarranted. The copies of settlement are produced at Exhibit M-1 to 5. Name of deceased workman is appearing at sl.No.265 corrected as 251. Working days are shown 84 with remark "found suitable. In Written Statement filed by 2<sup>nd</sup> party and affidavit of management's witness, the working days of deceased workman are shown 277 days in 1993, 316 days in 1994, 350 days in 1995, 366 days in 1996 and 102 days in 1997. It is clear from above that deceased workman had completed 240 days continuous working preceding 12 months of his termination. Deceased workman was not served with notice of termination, retrenchment compensation was not paid to him therefore termination of services of workman is in violation of Section 25-F of ID Act as held by their Lordship in case of Jasmer Singh versus State of Haryana and another reported in 2015-4 MPLJ. For above reasons, I record my finding in Point No.1 in Negative.

7. Point No.2- In view of my finding in Point No.1 termination of deceased workman is illegal for violation of Section 25-F of ID Act, question remains for consideration whether he is entitled for reinstatement with backwages. Workman died long back in 2006 therefore reinstatement of workman is not possible. Considering evidence that deceased workman worked for 84 days in 1984 and he worked more than 240 days during the period 1993 to 97, compensation Rs. 1,50,000 would be appropriate.

8. In the result, award is passed as under:-

- (1) The action of the management is not proper and legal.
- (2) 2<sup>nd</sup> party is directed to pay compensation Rs. 1,50,000 to the workman.

Amount as per above order shall be paid to Smt. Kiran Shukla- widow of workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1769.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 21/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-41012/52/2006-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1769.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/07) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Central Railway and their workmen, received by the Central Government on 19.08.2016.

[No. L-41012/52/2006-IR (B-I)]

RANBIR SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/21/07**

Smt. Geeta Bai,  
S/o Shri Mohanlal Dumar,  
R/o Rly Qtr. No. RBI-16/A,  
Central Railway Jhukehi Station,  
Jhukehi Tehsil Maihar,  
Distt. Satna (MP)

... Workman

**Versus**

Divisional Railway Manager,  
Central Railway,  
Jabalpur (MP)

... Management

**AWARD**

Passed on this 15<sup>th</sup> day of July, 2016

1. As per letter dated 24-1-2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-41012/52/2006-IR(B-I) The dispute under reference relates to:

“Whether the action of the management of Divisional Raiwlay Manager, West Central Railway, Jabalpur (MP) in terminating the services of Smt.Geeta Bai W/o Shri Mohanlal Dumar w.e.f. 7-7-1992 is legal and justified? If not, what relief she is entitled to and from which date?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/3. Case of Ist party workman is that she belongs to Dumar Caste which is recognized as SC. That she was working as substitute sweeper from 1-1-1986 at Railway station, Jabalpur. Thereafter she was working at Railway Station CHC, DRM Office, Control Room. In 1988, she was transferred to Railway godown, Jabalpur where she was working till 7-7-992. That she worked morethan 240 days preceding 12 months of her termination that instead of regularizing her services, her services were terminated without notice, retrenchment compensation was not paid to him. Termination of his service is in violation of Section 25-F of ID Act. Ist party further contends service card was not issued to her despite of her repeated request. Though assurance was given to her for regularization of her services, her representations were not considered. That after termination of her services, he is unemployed and facing financial hardship. On such ground, Ist party prayed for reinstatement with backwages.

3. 2<sup>nd</sup> party filed Written Statement at page 16 to 19 opposing claim of Ist party. 2<sup>nd</sup> party raised preliminary objection that particulars of service book alleged to have been cooked up by claimant are vague. Claimant has not given details of her initial appointment. The post held by her, the office in which she worked therefore reference is not tenable. That as per terms of reference, services of claimant are terminated on 7-7-92, dispute is raised in 2007 is belated. The reference is not tenable. Ratio held in some cases are referred. That due to passage of time, relevant documents are not available. The dispute is raised after 15 years. It is not possible to trace the documents relating to the employment of claimant. That there is recruitment of all categories of workers in Railway. The local persons are engaged for discharging casual nature of work as and when required. The persons are not kept in such employment for more than 120 days. That Ist party was not appointed by recruitment board of Railway neither she was appointed on compassionate ground. The perusal of record of Railway Station, Jabalpur, DRM office shows that claimant was not engaged as casual labour. The claim of workman about her engagement is denied. The claim of Ist party is false and fabricated. 2<sup>nd</sup> party reiterates that workman was not engaged as casual employee. It is submitted that casual card was not issued to her as she was not engaged by the management. As Ist party workman did not work with management, there is no question of having such documents. 2<sup>nd</sup> party prays reference be answered in its favour.

4. Ist party filed rejoinder at Page 36 to 41 reiterating contentions in statement of claim. Ist party submits that ratio held in case Eagle Fashions Versus Secretary (Labour) & others reported in 1999(I)-LLJ-232 is not applicable. 2<sup>nd</sup> party has produced documents Annexure M-1 for the period 9-2-80 to 5-1-83, the name of claimant would have been available in subsequent pages as she was working during the period 1-1-86 to 7-7-92. Management has not produced those documents that persons whose names are appearing in M-1 during the period 9-2-80 to 5-1-83 are still in employment.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Divisional Raiwlay Manager, West Central Railway, Jabalpur (MP) in terminating the services of Smt.Geeta Bai W/o Shri Mohanlal Dumar w.e.f. 7-7-1992 is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

**REASONS**

6. The term of reference pertains to legality of termination of services of workman. Claimant Geetabai filed affidavit of her evidence. She has stated that on 1-1-86, she was engaged as substitute on vacant post at Railway Station, Jabalpur. Thereafter she was working at CHC, DRM Office till 1988. She was transferred to Railways godown in 1988 where she worked till 7-7-92. She was not regularized. Her services were terminated without notice. Her representations were not considered. She was terminated without notice, retrenchment compensation was not paid to him. Her services are terminated in violation of Section 25-F of ID Act. From her evidence, documents W-1, W-2 are admitted in evidence. W-1 shows that claimant was found senior as per record and she would be engaged as sweeper at Railway godown. The certificate is issued on 15-12-88 doesnot show her working days. The document Exhibit W-2 shows 404 working days of Ist party from 6-3-86 till July 1992. Document W-2 doesnot bear the name of Ist party workman therefore it is difficult to hold that the working days of workman are shown in said document. Besides above, the inconsistency about working days were appointed by Shri A.K.Shashi for management 31 days working shown from 27-9-91, 36 working days shown from 29-6-92. However in Exhibit W-2 itself, inconsistency are explained in the bracketed portion.

7. Claim of Ist party workman is tried to be supported by witness Munnalal and Sumanbai. That Claimant Geeta Bai was working with them during the period Jan 1986 to July 94 while they working in Railway. Munnalal in his cross examination says during 1986, he was working at Jabalpur Station with Station Master. He was promoted in 1989 and posted at Gadarwara. That he never worked in Railway godown. He claims ignorance who was working in Railway godown. Therefore his evidence is not safe for reliance. Sumanbai in her cross examination says from 1986 to 1989, he worked at Railway Station, Jabalpur. That casual service card was issued to her. She was unable to tell casual service card was issued to claimant Geeta Bai. In 1988, she was working at Railway Station. She never worked in Railway godown. That claimant was working with her at Railway Station, jabapur in 19865. Thereafter she was working in Railway godown. They were taking lunch together. Claimant told that she was working at Railway godown, she was unable to tell the period claimant Geeta Bai worked at Railway godown. Evidence of Sumanbai also not worth to rely. Management's witness Kamal Kumar filed affidavit of his evidence supporting contentions in Written Statement that claimant was not working as substitute sweeper. In his cross-examination, management's witness says he was working at Railway godown from March 08 to June 2012. From 1-6-86 to 7-7-92, he was working in Head Booking Office, Gadarwara. He was unable to tell who was working as Suptd. in Railway godown during 1986 to 1992. That he had seen record of casual labours for the period 86 to 1992. Name of Ist party was not seen by him.

8. Learned counsel for Ist party Shri Bhattacharjee during course of argument emphasized that management's witness had seen record of casual employees for the period 1986 to 1992 said record is not produced. If evidence of management's witness is considered, he says that name of claimant was not found, is not shattered in his cross-examination. The record for the period 1982 to 86 was not available therefore it was not produced in the case. Management's witness has given explanation.

9. 2<sup>nd</sup> party Shri A.K.Shashi submits that the dispute is referred more than 15 years is not tenable. In support of his argument, learned counsel relies on ratio held in case between

Nedungadi Bank Ltd. Versus K.P.Madhavankutty and others reported in 2000-I-LLJ-561. Their Lordship dealing with Section 10 of ID Act held power to make reference cannot be exercised at any time say after delay of 7 years and there being no industrial dispute existing or apprehended.

In case between Assistant Executive Engineer, Karnatak versus Shivalinga reported in 2002-I-LLJ-457. Their Lordship dealing with delay and laches more than 9 years in approaching Labour Officer. In cases of serious dispute as to relationship of employer and employee, records of employer being relevant would come difficulty of maintenance of same situation of such nature renders claim held fatal to the case.

In present case, Ist party was terminated on 7-7-92, the dispute is referred on 24-1-2007 after order passed by Hon'ble High Court in Writ Petition No. 14211 of 2006. For such long lapse of time, it is certain that the material documents not available with the management. The dispute referred after long lapse of time would not be tenable. W.r.t. above point, learned counsel for Ist party Shri Bhattacharjee submits that Hon'ble High Court has passed order for making reference of the dispute. There is no question of delay. Above argument could not be accepted in view of above cited cases.

10. The documentary evidence produced by workman Exhibit W-1 doesnot show her working days. Exhibit W-2 produced by Ist party doesnot show her name and it cannot be accepted that from Exhibit W-2 her claim about working for 240 days preceding her termination. When evidence adduced by workman is not cogent and reliable, when workman has failed to establish that she completed more than 240 days working preceding termination of her service, therefore termination of service of workman cannot be said in violation of Section 25-F of ID Act.

11. Learned counsel for Ist party Shri Bhattacharjee relies on ratio held in

Case of Surendranagar District Panchayat versus Dahyabhai Amarsingh reported in 2006-SCC(L&S) 38. Their Lordship dealing with above point held burden of proof lies on workman. It is for workman to adduce evidence apart from examining himself or filing an affidavit to prove the said factum. Such evidence may be in form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days or examination of a co-worker.

The evidence of workman and her witnesses discussed above is not consistent. The witnesses had no knowledge as to who were working at Railway godown. Ratio held in above case cannot be applied to case at hand. Therefore I record my finding in Point No.1 in Affirmative.

12. PointNo.2-In view of my finding in Point No.1 workman has failed to establish that termination of her service is in violation of Section 25-F of ID Act. Rati held in case between Gauri Shanker versus State of Rajasthan reported in 2016(1)SCC(L&S) 546 by Shri Bhattacharjee cannot be applied. Workman is not entitled to any relief. Learned counsel for 2<sup>nd</sup> party Shri A.K.Shashi relies on ratio held in AIR-2007-SCC-166, 2005-LLJ-161 ratio held in those cases pertains to regularization in service and status of badly substitute workers which has no direct bearing to the present case, therefore detailed discussion is not necessary. For above reasons, I record my finding in Point No.2 that the workman is not entitled to any relief.

13. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1770.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 47/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-41012/171/2002-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1770.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Central Railway and their workmen, received by the Central Government on 19.08.2016.

[No. L-41012/171/2002-IR (B-I)]

RANBIR SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/47/2003**

Shri Ramesh Fagua,  
R/o Jujharupur,  
Distt. Hoshangabad (MP)

... Workman

#### Versus

Divisional Railway Manager(P),  
Central Railway,  
Bhopal

...Management

**AWARD**

Passed on this 15<sup>th</sup> day of July, 2016

1. As per letter dated 10-2-2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-41012/171/2002-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Divisional Rail Manager, Central Railway, Bhopal in terminating the services of Shri Ramesh Fagua, Ex.Box Boy Bina vide order dated 18-12-95 is legal and proper? If not, to what relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/5. Case of Ist party workman is that he was engaged on post of box boy on 27-3-78. He worked on said post at Itarsi for 13 years. As per order in March 1991, he was transferred to Bina Yard. Since March 91, he was posted at Bina. On 21-3-91, he was arrested by Bina Police for offence under Section 379/ 511 IPC. He was released on bail, he reported on duty as Yard Master, Bina. He was told by Yard master that till criminal case was pending against him, he would not be allowed on duty.

3. Ist party workman further submits that because of the shock of said incident, his wife died on 2-7-91. Workman had reported on duty on 6-7-91. He was not allowed. Thereafter he was suffering from illness till 26-3-92. He had reported to duty on 27-3-92 but he was not allowed despite he had submitted medical certificate. The officers were telling him to produce evidence of his innocence. He received letter dated 10-11-94. Said letter was replied by him. He was acquitted in Criminal Case No. 1488/91 on 11-11-97. Thereafter workman approached the office for allowing him on duty but he was not taken on duty telling the reasons that he was removed from service for unauthorized absence. He was not allowed on duty. Ist party workman contends that any chargesheet was not issued to him, no enquiry was conducted. Notice of termination was not given, retrenchment compensation was not paid to him. Termination of his service is illegal. On such ground, workman prays for his reinstatement with backwages.

4. 2<sup>nd</sup> party filed Written Statement at Page 8.1 to 8/4 opposing claim of workman. 2<sup>nd</sup> party reiterates that workman was engaged as box boy on 10-3-78. As per letter dated 8-1-91, he was transferred to Bina. Workman was remained unauthorisely absent. Major penalty was imposed against him. Workman was removed from service. 2<sup>nd</sup> party denies that workman had reported to duty. For unauthorized absence, chargesheet in Form V was issued to workman was sent by RPAD. On his address. Chargesheet was also pasted on notice board. Workman did not respond to the chargesheet. Punishment of removal was imposed on 18-12-95. The appeal preferred by workman was rejected. On such ground, 2<sup>nd</sup> party prays for rejection of the claim.

5. As per order dated 2-4-14, enquiry conducted against workman is found legal.

6. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman of unauthorized absence is proved from evidence in Enquiry proceedings?	In Negative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

**REASONS**

7. As narrated above, enquiry conducted against workman is found legal. The point whether misconduct alleged against workman is to be decided considering evidence in Enquiry Proceedings. Record of enquiry Exhibit M-1 is produced by management of 2<sup>nd</sup> party. The record of Enquiry Proceeding doesnot indicate on what evidence, the Enquiry Officer recorded his finding about unauthorized absence of workman. Enquiry Officer did not record evidence of any witness, no documents were produced before Enquiry Officer pertaining to the absence of workman. Exhibit M-1 is office note submitted by Shri S.S.Sharma (MVI) Headquarters. The office note M-1 finds reference of notices issued to the employee by RPAD. Notice pasted at the notice board standard form V was served on employee in presence of two witnesses. Enquiry was conducted exparte. Para 5 pertains to Disciplinary Authority imposed penalty

of removal from service upon workman. Page 10 of Exhibit M-1 shows that the representation submitted by workman were found not satisfactory and the workman was held guilty and the punishment of penalty of removal from service was imposed against workman. Page 8 & 9 of Exhibit M-1 refers to workman had not appeared in the Enquiry Proceedings. Conclusion was drawn that because of the absence of workman, charges are proved. Said finding is not supported by any thread of evidence. There is absolutely no evidence to make out charge of unauthorised absence against workman. It is worth to note that workman did not participate in Enquiry Proceeding neither he participated in the reference proceeding. However only because of his absence, it cannot be said that misconduct alleged against him is proved. Unless some evidence was brought before Enquiry Officer to support his findings, the misconduct of unauthorized absence cannot be established. For above reasons, I record my finding in Point No.1,2 in Negative.

8. Point No.3- In view of my finding in Point No.1 misconduct alleged against workman is not proved, punishment of removal cannot be sustained. Ist party workman despite not participated in reference proceeding, there is no evidence what the workman was doing all those years and surviving. Management has not adduced evidence about gainful employment. Considering the above facts, backwages could not be awarded to the workman. However as charges against workman are not proved and punishment of removal cannot be sustained, workman deserves relief of reinstatement without backwages. Accordingly I record my finding in Point No.3.

9. In the result, award is passed as under:-

- (1) The the action of the management of Divisional Rail Manager, Central Railway, Bhopal in terminating the services of Shri Ramesh Fagua, Ex.Box Boy is not proper and legal.
- (2) The punishment of removal of workman is set-aside. 2<sup>nd</sup> party is directed to reinstate workman on the original post but without backwages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1771.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 70/12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-12011/59/2011-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1771.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 70/12) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19.08.2016.

[No. L-12011/59/2011-IR (B-I)]

RANBIR SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/70/12

General Secretary,  
Dainik Vetan Bhogi Bank Karmchari Sangathan,  
F-1, Tripti Vihar,  
Opp Engineering College,  
Ujjain (MP)

...Workman/Union

#### Versus

Chief General Manager,  
State Bank of India, LHO,  
Hoshangabad Road,  
Bhopal

...Management

**AWARD**

Passed on this 22<sup>nd</sup> day of June, 2016

1. As per letter dated 25-5-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12011/59/2011-IR(B-I). The dispute under reference relates to:

“Whether the demand of the Union, Dainik Vetan Bhogi Bank Karamchari Sangthan for regularizing the services of Shri Mukesh Parmar from the date of his termination i.e. w.e.f. 5-4-2010 is legal and justified? To what relief the workman/Union is entitled?

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim through Union. Case of Ist party workman is that he was orally engaged as peon on daily wages by Branch Manager, Maheshnagar branch from 22-6-98. He was working 8 hours per day. He was paid wages Rs.50, wages were increased to Rs.60,70, 80, 00, 150 per day. He was working 6 days in a week. He was continuously working from 22-6-98 till 5-4-2010. From 1-6-07, he was paid wages in his name. he had worked more than 240 days preceding 12 months of his termination. His services are terminated without notice. Retrenchment compensation was not paid to him. Termination of his service is illegal for violation of Section 25-F of ID Act. On such ground, workman prays for his reinstatement with backwages.

3. 2<sup>nd</sup> party filed written statement opposing claim of Ist party workman. Case of 2<sup>nd</sup> party is Bank is established under Section 3 of State Bank of India Act, 1955. It carries banking business under Section 35 of the Act. State Bank of Indore is merged in State Bank of India vide Notification dated 27-8-2010. As per conditions of the notification, permanent staff in the Bank was absorbed giving option of employment in the Bank. The erstwhile State Bank of Indore engaged Ist party workman on daily wage basis as per exigency. He is not entitled for regularization of services as per the notification. Merely completing 240 days continuous service doesnot give right for regularization. 2<sup>nd</sup> party has denied that workman had completed 240 days continuous service. In parawise reply, 2<sup>nd</sup> party reiterated that workman was engaged on daily wages as per exigency by State Bank of Indore. He not completed 240 days continuous service. workman is not covered under Section 25 B of ID Act. Violation of Section 25-F of ID Act is denied. It is reiterated that the workman not appointed following recruitment process. He is not entitled to any relief. 2<sup>nd</sup> party prayed reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the demand of the Union, Dainik Vetan Bhogi Bank Karamchari Sangthan for regularizing the services of Shri Mukesh Parmar from the date of his termination i.e. w.e.f. 5-4-2010 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

**REASONS**

5. The term of reference appears not properly worded. The term of reference pertains to regularization from the date of termination but legality of termination of services of workman appears to be challenged. Both parties filed statement of claim, Written Statement. However workman did not adduce evidence. The representative of Union accordingly made submissions on 14-11-2014. Consequently the evidence of Ist party was closed. 2<sup>nd</sup> party also failed to adduce evidence. Evidence of 2<sup>nd</sup> party is closed on 17-11-2015. Copies of documents are produced by Ist party but no valid evidence is adduced to prove those documents. As both parties failed to adduce evidence, dispute under reference could not be decided on merit.

6. In the result, award is passed as under:-

“As both parties failed to adduce evidence in support of their pleadings, the dispute under reference could not be decided on merit.”

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1772.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 289/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-41012/42/97-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1772.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 289/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Central Railway and their workmen, received by the Central Government on 19.08.2016.

[No. L-41012/42/97-IR (B-I)]

RANBIR SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/289/97**

Shri Malhari Ganu,  
DO Colony Anda,  
PO Harda,  
Distt. Hoshangabad (MP)

... Workman

Versus

Regional Railway Manager(P),  
Central Railway,  
Bhusawal

...Management

### AWARD

Passed on this 23<sup>rd</sup> day of June, 2016

1. As per letter dated 7-10-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-41012/42/97-IR(B). The dispute under reference relates to:

“Whether the action of the management of Divisional Railway Manager(P), C.Railway Bhusawal in terminating the services of Shri Malhari Ganu w.e.f. 25-9-87 on the basis of his fault for absenting himself due to sickness thus imposing major punishment in comparison to this fault is justified or not? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/4. Case of Ist party workman is that he was engaged as permanent Gangman under PWI vide Service Card No. 217006 in 1969. Thereafter as per rules, he was appointed as permanent helper Khalasi. There was no complaint about his work. On 30-1-87, he suffered from illness and received treatment in Railway hospital. He was on sick. Workman further submits he was suffering from the mental sickness. He had gone to his village without giving intimation to the Medical officer. That he belongs to poor illiterate family, his family members believed that he was possessed on the spirits and given witchcraft treatment in the village. After the workman recovered off his illness, went to resume his work. He was served chargesheet dated 7-8-87. Workman had replied that because of his mental sickness, he could not give intimation about his absence from duty. Workman has further contented that enquiry conducted against him in violation of the Discipline and Appeal rules, he was not given opportunity to cross examine the witness of the management. Exparte enquiry was conducted without giving intimation to him. Management not produced any witnesses rather the statement of Shri R.G.Chawan was accepted. Enquiry was conducted in violation of principles of



natural justice. On findings of Enquiry officer, he was illegally dismissed from service. Workman submits that dismissal of his service is illegal. Workman prays for his reinstatement with backwages.

3. 2<sup>nd</sup> party filed written Statement at page 6/1 to 6/2 opposing claim of workman. 2<sup>nd</sup> party denied that workman was appointed as permanent Gangman from 1969. Infact the workman was appointed as helper khalasi on 17-12-79, workman was on sick from 30-1-87. Workman was discharged from hospital, he was taken out of the sick category. Workman remained unauthorisely absent in violation of medical rules. Workman was found guilty of absence without giving intimation. Chargesheet was issued to workman. Workman was found guilty. Therefore the punishment of dismissal was imposed against him. The appeal preferred by workman was rejected. Revision preferred by workman was also rejected on 29-12-88 as barred by limitation. 2<sup>nd</sup> party reiterates that punishment of dismissal imposed against workman is proper. Workman is not entitled to any relief.

4. Workman filed rejoinder at Page 7/1 to 7/4 reiterating his contentions in statement of claim.

5. As per order dated 11-4-14, enquiry conducted against workman was found not legal. As per order dated 20-1-2015, management was permitted to prove misconduct in court.

6. Considering pleadings on record and order on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charge of unauthorised absence alleged against workman is proper?	In Negative
(ii) Whether the action of the management of Divisional Railway Manager(P), C.Railway Bhusawal in terminating the services of Shri Malhari Ganu w.e.f. 25-9-87 on the basis of his fault for absenting himself due to sickness thus imposing major punishment in comparison to this fault is justified or not?	In Negative
(iii) If not, what relief the workman is entitled to?"	As per final order.

### REASONS

7. Point No.1, 2- as enquiry conducted against workman is found illegal vide order dated 11-4-14, management was permitted to prove misconduct. Management filed affidavit of Shri Gajanan Haribhau Dharangavkar. The witness of the management has stated that workman was absent without intimation, charge against workman was about his unauthorized absence for the period 13-1-87 to 20-7-87. Workman had not given intimation about his absence. The family members of workman had also not given intimation. The affidavit of management's witness is further devoted about the matters of issuing chargesheet and conducting enquiry against the workman. Witness of management in his cross-examination says he doesnot know workman. Workman not worked under him at any time. Enquiry was not conducted in his presence. Office has handed over related documents to him. His affidavit is based on documents. He had not seen chargesheet or the order of punishment.

8. Workman filed affidavit of his evidence stating that after dismissal of his service, he was unemployed. He is not in gainful employment, his financial condition is not good. He resides in rented house. In his cross-examination, workman denies that he was absent from duty therefore he was terminated. When he was suffering from illness, he was absent to its intimation was given to the management. The documents are not produced. Evidence of management's witness is not cogent on the point that the workman was unauthorisely absent. He had not given intimation about his absence from duty as management's witness was not directly considered with the matter. The evidence of management's witness is based on the documents of enquiry. When enquiry is vitiated, the evidence of management's witness is based on the documents of enquiry. When enquiry is vitiated, the evidence of management's witness on same point cannot be relied. Therefore I record my finding in Point No.1 in Negative.

9. Point No.2- In view of my finding in Point No.1 charges alleged against workman are not proved, punishment of dismissal imposed against workman cannot be sustained. The argument advanced by learned counsel by 2<sup>nd</sup> party Shri R.K.Soni that workman had admitted absence from duty, workman has not established that he had given intimation about his absence from duty and therefore workman is not entitled to any relief cannot be accepted. Burden lies on management to prove the charge of unauthorized absence alleged against workman. When charges are not proved by management by valid evidence, punishment of dismissal cannot be sustained. Workman in his evidence says

he is unemployed. Management has not adduced any evidence about workman is gainful employment. Therefore workman deserved to be allowed, reinstatement with backwages. Accordingly I record my finding in Point No.3.

10. In the result, award is passed as under:-

- (1) The action of the management is not proper.
- (2) The punishment of dismissal is set-aside. 2<sup>nd</sup> party is directed to reinstate workman with continuity of service and reinstatement with back wages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1773.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 242/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-12012/97/99-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1773.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 242/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19.08.2016.

[No. L-12012/97/99-IR (B-I)]

RANBIR SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/242/99**

Shri Manohar,  
S/o Tulsiram Sirsat,  
167, Hot Road,  
Ratlam (MP)

...Workman

#### Versus

General Manager (D&P),  
State Bank of India,  
Local Head Office,  
Hoshangabad Road,  
Bhopal (MP)

Asstt. General Manager,  
State Bank of India, Region-V,  
Zonal Office, Hamidia Road,  
Bhopal (MP)

... Management

#### AWARD

Passed on this 21<sup>st</sup> day of July 2016

1. As per letter dated 21-6-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/97/99-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of General Manager (D&P), State Bank of India in terminating the services of Shri Manohar S/o Tulriram Sirshat w.e.f. 28-4-97 is justified? If not, to what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at Page 2/2 to 2/9. Case of Ist party workman is that he was working in Collectorate branch of SBI at Ratlam from 19-12-83 to 19-4-97 as messenger against permanent post. He worked in various department like cash, post delivery, counter, records etc. the Bank Officers had faith in him. His integrity was high he was allowed to work in cash department. That he belong to SC category, he was called for interview for post of messenger. However the selection committee had included candidates having lesser number of days than him. Ist party had complained about it, selection committee was suspended and enquiry was initiated. That Ist party was not allowed to sign attendance register. It is illegal to prevent employee from signing register. Bank has not strictly followed the guidelines under Sastri Award. Bank is not deliberately maintain record of Class IV employees to prevent their claims for employment in the branch office. That Ist party had delivered register post to the concerned parties. It is very important portfolio because cheques amounting lakhs of rupees were delivered to the customers of the Bank.

3. Ist party further contends that Manager has recommended to Assistant General Manager, Zonal Office on 24-4-97 that the applicant has been working regularly since 1984 and thus deserves for regularization. But unfortunately the Bank has regularized seven juniors to the workman. Ist party was not absorbed because the workman is a poor person belong to a weaker section and couldnot afford to fulfill an illegal demand for regularizing him in service. that the rules of the Bank pertaining to temporary employees aggregate 90 days temporary service as on 31-10-84 are given chance for appointment. Ist party was not given said benefit. Ist party further submits that termination of his service is arbitrary and illegal. The termination is in violation of Section 25-F of ID Act. That he was in continuous service. non-renewal of contract is malafide. Ist party has reiterated that his services are terminated in violation of Section 25-F of ID Act. Ist party prays for his reinstatement with backwages.

4. 2<sup>nd</sup> party filed Written Statement at Page 9/1 to 9/7 opposing claim of Ist party. 2<sup>nd</sup> party submits that Ist party had worked for 80 days during the period 19-12-83 to 12-3-84. Working days of Ist party are shown in para-1 of the Written Statement 18 days in 1995, 287 days in 1996 & 84 days in 1997. That engagement of Ist party was on contract basis as per exigency of work. He was not required to report to work on next day. The non-engagement of Ist party casual rated employee is not retrenchment. Ist party was engaged on contract basis. The working started with opening hours and ended with closing of the Bank. Non-engagement of Ist party is covered under Section 2(oo)(bb) of ID Act. Ist party has not completed 240 days continuous service during any of the year. Engagement of Ist party was purely contractual depending on exigency of work. As per bipartite agreement dated 17-11-87, 16-7-88, 28-10-88, 9-1-91, management had given opportunity to employees covered as per above settlement. List of selected candidates was prepared. Ist party was called for interview in February 89. Ist party was not found eligible for permanent employment as per seniority, he had worked for 80 days till cut off date 14-8-91 as per settlement panel was kept alive till March 1997 so that vacancies were available till 31-12-94. Above contentions are reiterated by 2<sup>nd</sup> party emphasizing that Ist party was not found eligible for permanent absorption. He was not given permanent employment in the Bank. That Ist party had not completed 240 days continuous service during calendar year preceding his non-engagement. Ist party is not covered as employee under Section 25 B of ID Act. Termination of Ist party is not in violation of Section 25-F of ID Act. On such ground, 2<sup>nd</sup> party submits that workman is not entitled to any relief.

5. Ist party filed rejoinder at Page 10/1 to 10/2 reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of General Manager (D&P), State Bank of India in terminating the services of Shri Manohar S/o Tulriram Sirshat w.e.f. 28-4-97 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

### REASONS

7. The term of reference pertains to legality of termination of Ist party workman. The term of reference doesnot include the claim for regularization of service of Ist party as per the bipartite settlement. Therefore claim of Ist party pertaining to denial of regularization in service as per bipartite settlement or interview is beyond the terms of reference. 2<sup>nd</sup> party in Written Statement in Para 1 admitted Ist party worked for 287 days.

8. Ist party filed affidavit of his evidence supporting his contentions in statement of claim. Bank given certificate of 80 days working though he was continuously working during 1983 to 1997. That Bank was preparing debit vouchers of daily rated messengers and obtaining signatures for paying monthly amount of working as daily rated employee. That after appointment, he was interviewed and his name was included at Sl.No.619 of the panel. He belongs to SC community. In his cross examination, Ist party admits that during 19-12-83 to 12-9-84, he worked on daily wages at Ratlam branch as messenger. He denies that there after he was working in collectorate branch during 1993 to 1997 as hammal. The contents of Exhibit W-2 he was working as hammal is incorrect. The contents of his affidavit that he was working as hammal shown in document Exhibit W-2 is incorrect. He admits that he was called for interview as per bipartite agreement, he submitted application as per Exhibit W-1. Other daily wage employees were called for interview alongwith him. His name was not in the Waiting List. The contents of his affidavit that his name was included in Wait list is incorrect. He admits that the other candidates called for interview were appointed as per seniority. He admits that he was interviewed in 1989. He claims ignorance that select list was valid till March 97. Select is produced at Exhibit M-10. Name of Ist party is appearing at Sl.No.83 overwritten 76 is working days are shown 80 mark obtained 38 decision found suitable Category-I. In select list, Exhibit M-10 candidates having lesser number of working days is not given appointment. As observed earlier, the term of reference doesnot include for regularization and therefore evidence of workman about his interview and not appointed after his interview is beyond the terms of reference. The evidence needs no detailed discussion.

9. Exhibit W-1 is admitted by management shows Ist party worked for 80 days during 19-12-83 to 12-4-84, W-2 admitted by management shows Ist party was working as Hammal from 1-12-95 till certificate was issued on 11-4-97. From W-2, it is clear that Ist party worked more than 240 days preceding termination of his service. Exhibit W-3 is interview call issued to Ist party. The documents produced by management Exhibit M-1 is copy of application submitted by Ist party shows 80 days working, Exhibit M-2 is certificate issued about 80 working days of Ist party. M-3 shows 80 working days of Ist party during 19-12-83 to 12-4-84 as full time temporary messenger, 287 working days from 4-1-96 to 31-12-96, 84 days from 1-1-97 to 19-04-97. The above documents also proves that Ist party had worked more than 240 days preceding one year of his termination. M-4 is copy of interview call. M-5 is copy of settlement. From documentary evidence discussed above, it is clear that Ist party worked more than 240 days preceding 2 months of his termination, Ist party was not served with termination, notice of termination, retrenchment compensation was not paid to him. Therefore termination of workman is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

10. Point No.2- In view of my finding in Point No.1 termination of Ist party is illegal for violation of Section 25-F of ID Act, question remains for consideration is whether Ist party is entitled for reinstatement with backwages. In support of his claim, learned counsel for Ist party Shri R.K.Soni relies on ratio held in case between

Jasmer Singh versus State of Haryana and another reported in 2015(4)MPLJ-5. Their Lordship of the Apex Court dealing with termination of workman more than 240 days without complying Section 25-F upheld that workman is entitled for reinstatement with continuity of service with full backwages.

Learned counsel for 2<sup>nd</sup> party on the above point relies on ratio held in case between

Senior Superintendent Telegraph Traffic, Bhopal versus Santosh Kumar Seal and others reported in 2010(6)SCC-773. Their Lordship of the Apex Court dealing with point of reinstatement, backwages etc. held relief by way of reinstatement with back wages not automatic even if termination of employee is found to be illegal or in contravention of the prescribed procedure and monetary compensation in cases of such nature may be appropriate.

The careful reading of citation 2015(4)MPLJ-5, it would be seen that above cited case has not been overruled. As Ist party workman has worked only for 80 days in 1983-84 and thereafter he worked with 2<sup>nd</sup> party for 18 days in 1995, 287 days in 1996 & 84 days in 1997 on daily wages, considering the period of work, reinstatement with backwages would not be appropriate. As the Ist party was working on daily wage basis, reasonable compensation would be appropriate relief. In my considered view, compensation Rs. One Lakh would be reasonable. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management is not proper and legal.
- (2) 2<sup>nd</sup> party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1774.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 75/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-12011/23/2011-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1774.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 75/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 19.08.2016.

[No. L-12011/23/2011-IR (B-I)]

RANBIR SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR****NO. CGIT/LC/R/75/2011**

General Secretary,  
Dainik Vetan Bhogi Karmchari Sangathan,  
F-1, Tripti Vihar, Opp. Engg.College,  
Ujjain

...Workman/Union

**Versus**

Chief General Manager,  
State Bank of India,  
LHO, Hoshangabad Road,  
Bhopal (MP)

...Management

**AWARD**Passed on this 4<sup>th</sup> day of July, 2016

1. As per letter dated 27-7-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/23/2011-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of India, Regional Office, Bhopal in terminating the services of Shri Bhopal Singh, ex-casual employee w.e.f. 28-8-08 is legal and justified? To what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party Union filed statement of claim on behalf of Shri Bhopal Singh. Case of Ist party is that Bhopal Singh was engaged by Branch Manager Virendra Kumar on monthly pay Rs.200/- from 9-11-07. Workman was working with devotion. Saving Bank Account was opened in his name, monthly salary was deposited in his Saving Account. That pay for the month of July and August was due against the management. Ist party reiterates that workman completed 240 days continuous working. He was terminated without notice, retrenchment compensation was not paid to him. Ist party reiterates that the workman is covered under Section 25 B of ID Act, his services were terminated in violation of Section 25-F of ID Act. The policy of last come first go was not followed. The termination of his service is in violation of Section 25-G,N of ID Act. After termination of his service, 2<sup>nd</sup> party engaged other daily wage employees in violation of Section 25 H of ID Act. On such ground, workman prays for reinstatement with backwages.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of Ist party. 2<sup>nd</sup> party submitted that there is Local Implementation Committee which is Welfare Committee of staff members. Branch Manager is its President, Bank provides subsidy to said committee for running canteen services. Bank has no concern with the recruitment by Local Implementation Committee and its staff. Ist party was engaged as canteen boy in November 2007 in Neemuch branch.

He continued to work in canteen till June 2008. Ist party was paid Rs.1000 per month Ist party workman was not engaged by the Bank. 2<sup>nd</sup> party further submits that work of cleaning of branch premises was taken from Ist party for few days from 9-11-07 to June 2008. The cleaning work was for about an hour and not for whole day. Ist party was paid Rs.50 per day for cleaning of the branch. The details of the payments are shown in para 4 of the Written Statement. For 20 days in a month from November 07 to June 08. 2<sup>nd</sup> party denies that workman completed 240 days continuous working. It is reiterated that Ist party was engaged for cleaning work, he was paid Rs.50 per day. Ist party was never engaged after 30-6-08, he not completed 240 days continuous working. Therefore Ist party was not entitled to notice of retrenchment compensation. Ist party is not entitled to protection under ID Act. Violation of Section 25-G, H of ID Act is denied. On such contentions, 2<sup>nd</sup> party prays reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of State Bank of India, Regional Office, Bhopal in terminating the services of Shri Bhopal Singh, ex-casual employee w.e.f. 28-8-08 is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

5. The terms of reference pertains to legality of termination of workman Shri Gopal Singh. 2<sup>nd</sup> party denies Ist party had worked more than 240 days. Workman filed affidavit of his evidence supporting his contentions in statement of claim that he was engaged by Branch Manager on 7-9-07 on pay Rs.2000 per month on vacant post of peon. His pay was deposited in Saving Account. He was working as messenger. He was not allowed to work from -7-08. That his pay due till 20-8-00 was not paid. His services were terminated without notice on 20-8-08. Ist party in his cross examination says he was paid bonus from November 07 to June 08. When he received amount of bonus, he not complained about it. Regarding the statement in his affidavit that salary for July August was not paid to him, he had made complaint but copy of complaint is not produced. Workman admits that from June 08, he did not work in the Bank.

6. Management's witness Shri Harish Kumar Srivastava filed affidavit supporting contentions in the written statement that workman did not work after June 2008. The details of his working days are shown in para5 of his affidavit that workman had worked only for 160 days. From evidence of management's witness, Exhibit W-22 to 24 admitted. Before engaging workman, permission of Controlling Authority was not taken, appointment letter was not given to the workman, his muster roll was not maintained. Workman was paid Rs.50/- per day. Amount was deposited in his account. In July & August 08, who were engaged for cleaning work, witness was unable to tell their names. Workman was not served with notice, retrenchment compensation was not paid to the workman.

7. Ist party has produced documents Exhibit W-1 is reply submitted by Asstt. General Manager to RL finds reference about denying 240 days in para 4 and Para6(s). The documents produced by Ist Party Exhibit W-2 to W-22 pertaining to the denial of workman working more than 240 days the copies of payment vouchers, amount deposited in the Bank. In Exhibit W-11, payment Rs.1000 for 20 days working since November 2007 to June 2008 is shown. Any document is not produced by Ist party admitting his working in June, July & August 2008. The documents produced on record shows workman worked from November 07 to June 08. As per Exhibit W-20, Bonus of Rs. 667 for 160 days work was paid to workman. Exhibit W-22 is copy of the norms of payment. It has no nexus with the working days of Ist party. From documentary evidence, the contentions of workman, he worked in July 08, August 08 is not supported. Workman has failed to establish that he completed 240 days working. Workman in his affidavit of evidence himself says that he was not allowed to work from July 2008. His contentions about wages for the period July, Aug-08 were not paid is contradictory. Therefore violation of Section 25-F,G,N of ID Act is not established. For above reasons, I record my finding in Point No.1 in Affirmative.

8. Point No.2- In view of my finding in Point No.1 workman has failed to prove violation of Section 25-F, G,N of ID Act, reliance by Union Representative Shri R.Nagwanshi on copies of award in R/180/00, R/105/03, 27/04 cannot be beneficially applied to case at hand. Workman cannot be allowed any relief. Accordingly I hold and pass the award as under:-

- “(1) The action of the management is proper and legal.
- (2) The workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1775.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 157/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-12011/67/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1775.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 157/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 19.08.2016.

[No. L-12011/67/2012-IR (B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Dated 05<sup>th</sup> August, 2016**Reference: (CGITA) No. 157/2012**

The Zonal Manager,  
Bank of India, Zonal office,  
Bhadra, Ahmedabad – 380001

...First Party

V/s

The Secretary,  
Nav Jagrut Labour Union,  
28-B, Narayan Park, Sabarmati,  
Ahmedabad – 382424

...Second Party

**Appearance :**

For the First Party-Management : Shri D.C. Gandhi Associates

For the Second Party-Workman : Shri Ashok M. Pandya in person

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12011/67/2012-IR (B-II) dated 23.10.2012 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule :

**SEHEDULE**

“Whether the action of the management of Bank of India, Zonal office, Ahmedabad in stopping of annual increments for two years permanently of Shri Ashok M. Pandya without giving him reasonable opportunity to hear his views is justified? What relief the workman is entitled to?”

2 The reference dates back to 23.10.2012. Both the parties were served by registered notices and also being informed by the Central Government. The Second Party, Secretary of Nav Jagrut Labour Union, 28-B, Narayan Park, Sabarmati, Ahmedabad-382424 submitted its statement of claim Exhibit 3. The case of the second party workman Shri Ashok M. Pandya, in short, is that he was initially appointed on 01.09.1977 in Bank of India, Naroda branch as

Accounts Clerk and subsequently he was transferred to Bank of India, Raipur Chakla branch. The service conditions between Shri Ashok M. Pandya and the management of the Bank of India were governed by the Bipartite Settlement on the Industrial Disputes reached between certain banking companies and their workmen arrived at on 19th October, 1966 before Shri O. Venkatachalam, Chief Labour Commissioner (Central), New Delhi. It is his case that during the tenure of his service he had been working very honestly and sincerely.

It is his specific case that during his tenure in Bank Branch at Raipur Chakla, on 22.9.1989, Shri Pandya worked beyond his duty hours without claiming any overtime for the additional allotted work of half yearly September closing. On that day Shri Pandya requested the concerned Officer, Shri C. J. Barot to accompany him in completing work as workman alone could not be presumably safe to sit and work in the Branch during late night hours. The concerned officer Shri C. J. Barot was thus became compelled to remain present in Branch and give company to the workman as the closing work of September closing was required to be completed within the prescribed time-limit.

3. He further alleged that first party employer issued a Charge-sheet dated 13-12-1989 against him i.e. second party workman *inter alia* alleging that on 23.09.1989 the second party Shri Ashok Pandya reached the Branch late at 12.40 hours and stated that he was on leave. Therefore, Shri C.J. Barot, Assistant Manager (Admn.) marked "leave" in the Attendance Register and asked him to submit leave application. It is further alleged that instead of submitting leave application he had marked his presence for that day. The second charge is upon asking for submitting leave applications workman Shri Ashok M. Pandya threatened Shri C.J. Barot, Assistant Manager (Admn.). The workman submitted his reply to the same. However, the management decided to hold departmental inquiry against the workman Shri Ashok M. Pandya and appointed Shri S.T. Samtaney as the Enquiry Officer. During the departmental inquiry proceedings, it is the case of the second party workman taking a defense that he made a request for getting the opinion of Handwriting Expert's opinion from the Forensic Science Laboratory with a view to refute the allegation of tampering with the Muster Roll or attendance register, as alleged against him. It was also second party workman's case that in fact the tampering was done by Shri C. J. Barot to malign his career (i.e. Shri Ashok M. Pandya) also with a view to terrorize the subordinate staff members of the bank. The Inquiry Officer concluded the departmental inquiry and submitted his report on 11.02.1991 holding that the charges leveled against the workman were proved.

4. Pursuant to the aforesaid inquiry report, the disciplinary authority after issuing the notice to the workman and imposed the following punishment:

*"6. Considering the gravity of the misconducts committed by you and proved in the inquiry, it has been decided to confirm the proposed punishment of stoppage of your annual increments for a period of 2 years permanently, as per para 19.6(d) of first bi-partite settlement dated 19.10.1966. Accordingly, your annual increments falling due in December, 1991 and 1992 have been stopped permanently. You would be eligible to earn your annual increment in December, 1993, which please note."*

5. Against the said punishment the workman raised the aforesaid dispute praying that the punishment of stoppage of annual increments for a period of 2 years permanently ought to be set aside as the same has been in violative of clause 19.6(d) of the first bi-partite settlement dated 19.10.1966.

6. The first party, Bank of India, having its zonal office at Bhadra, Ahmedabad entered its appearance and submitted its written statement Ext. 5 along with number of document detailed in the list Exhibit 7 denying the allegations made in the statement of claim Ext. 3.

7. On the basis of the pleadings of the parties, the following issues/questions are to be addressed by this Tribunal:

- (i) Whether the action of the management in inflicting stoppage of two annual increments with permanent future effect on Shri Ashok Pandya without giving him reasonable opportunity of hearing is legal and justified?
- (ii) If, not, what relief the workman is entitled to?

8. To substantiate their respective stand, both the parties have adduced oral as well as documentary evidence in the case.

9. In support of this issue, the second party examined Shri Ashok Pandya, aggrieved person, by way of filing affidavit Exhibit 8, wherein he stated on oath that he requested the enquiry officer for sending the Muster Roll for examination to Forensic Science Laboratory or Handwriting Expert, the same was turned down by the enquiry officer as the Presenting Officer asserted that he would be able to prove the charge without the opinion of the FSL which the Enquiry Officer also accepted the same. The punishment inflicted upon him is beyond the scope of the bi-partite settlement. He also filed the list of documents at Exhibit 9 containing eight documents. The management, on the other hand, has examined two witnesses namely Shyam Thawardas Samtaney and Brijesh Ramanbhai Patel vide



affidavits/examination-in-chief Exhibit 11, 13 and 16. The management has also produced the list of documents at Exhibit M-7/1 to M-7/13.

### FINDINGS

#### 10. Issue No. 1

11. The aggrieved person stated in his affidavit that Shri C.J. Barot, Deputy Manager (Administration) had put his endorsement i.e. "leave" over the signature of Shri Ashok Pandya, the second party in the Attendance Register on 23rd August 1990 of the bank. This question has more significance regarding absence of Shri Pandya on the said date. It was a requirement of principles of natural justice that if an aggrieved person questions the conduct of the Bank Officer, then, the Inquiry Officer must accept the request of the aggrieved person to send the said document to Forensic Science Laboratory for its examination or for the opinion of hand writing expert. However, the Inquiry Officer has rejected such a request and denial of such request is definitely violative of principles of natural justice and the said enquiry cannot be said to be fair, impartial and proved beyond reasonable doubt. Though, the second party did not question the legality of the procedure of the enquiry but he had challenged the report of the Enquiry Officer dated 11.02.1991 and further challenged the punishment order dated 04.05.1991 vide application Exhibit-18 therefore, Labour Court/Industrial Tribunal is bound to adjudicate upon the legality and propriety of the punishment order referred in dispute and pronounce upon it where there is a basic error of law or violation of principles of natural justice and whether findings was completely baseless and perverse, colorable exercise of power and want of bonafide and punishment is shockingly disproportionate regard being had to the particular conduct or the past record or is such that no reasonable employer would even impose such punishment in like circumstances unless he is actuated by considerations of victimization or unfair labour practice.

12. However, at this stage, second party/workman cannot re-agitate this issue, but prima facie it appears from the face of records that holding of disciplinary proceedings against the workman in the captioned matter is colorable exercise of powers. This Tribunal is not satisfied with the findings of departmental enquiry as the punishment imposed is disproportionate and also excessive of Service Conduct/Rules. The Tribunal can *suo motu* consider this issue because, the issue of misconduct which has been alleged by the first party is not so important to punish the delinquent for a major penalty. Had I presume that the second party, Shri Ashok Pandya came late to the Bank on 23rd August 1990, the Bank would have deducted his leave from his leave account. Simply coming late cannot become a matter of enquiry leading to major penalty.

13. It is stated by the second party in his statement of claim para 2 that:-

*During his tenure at Raipur Chakla, on 22.9.1989, Shri Pandya had worked beyond his duty hours without claiming any overtime for the additional allotted work of half yearly September closing. On that day Shri Pandya had requested the concerned officer Shri C. J. Barot to accompany him as workman alone could not sit and work in the branch. The concerned officer Shri C. J. Barot was compelled to accompany and sit in the branch because the closing work was required to be completed within time which is the main crux of the episode.*

This aforesaid over mesh has not been rebutted in the written statement filed by the first party but instead avoided to comment on same by simply stating that:-

*"The averment that during his tenure at Raipur Chakla Branch, he was working beyond his duty hours without claiming any overtime etc. and are not relevant for deciding the present reference. Avoidance or omission to rebut is deemed admission that Pandya did overtime for more than a day for September closure".* Thus instead of appreciating a workman for good work he has been made victim of excessive bossism by way of initiating departmental proceeding and imposing major penalty, that too not permissible under Bipartite Settlement as discussed in next paragraph.

14. The provisions of bi-partite settlement dated 21.10.1966, which are binding on both the parties provide following punishments for the proved 'gross misconduct' in Clause 19.6 (d); (Exhibit 9/7):-

*"An employee found guilty of gross misconduct may;*

- (a) *be dismissed without notice, or*
- (b) *be warranted or censured or an adverse remarks entered against him; or*
- (c) *be fined, or*
- (d) *be his increment stopped, or*
- (e) *be his misconduct condoned may be merely discharged"*

- (f) *be fined, or*
- (g) *be his increment stopped, or*
- (h) *be his misconduct condoned may be merely discharged”*

15. In the present case, the second party, Shri Ashok Pandya has been awarded the punishment of stoppage of two increments with permanent effect though there is no provision of stoppage of increments permanently in clause 19.6(d) of the Bipartite Settlement on which bank management is relying upon. It is pertinent to note that clause 19.6(d) was modified as clause 6(f) in the later bi-partite settlement dated 10.4.2002 wherein there is a provision of stoppage of increments with or without cumulative effect; Exhibit 9/8. However, as this bipartite settlement dated 10.04.2002 is not having any retrospective effect therefore the management could not have imposed punishment of stoppage of increments permanently on Shri Ashok Pandya.

16. Further looking to the oral evidence of the witnesses of first party discloses that the same is nothing but exact reproduction of the averments of the management made in its written statement. The oral evidence adduced on behalf of the management having not been supported with any documentary evidence as per the affidavit in lieu of oral evidence of the witness of the first party Shri B. R. Patel at Exhibit 13, in which he had categorically admitted that during course of inquiry, presenting officer of the bank has produced documents as M-1 to M-17 in the presence of Mr. Pandya and his representative. He has stated that as the relevant documents are very old and after the inquiry as they were not traceable the bank could not produce it at the time of submission of inquiry proceedings before the Tribunal. He has further stated that at present the documents are not traceable and therefore the bank is not in a position to produce the said documents. In my view, it is not safe to rely on the same as some of the documents were withheld saying not available. Shri B. R. Patel had in his cross examination categorically admitted that:-

- “3. Shown Ex. 9/5; which is a punishment order dated 19.6.1991 given under clause 19.6(d) in which it is written that stoppage of two increments permanently. Shown Ex. 9.7; which is bi-partite settlement of 1966 and in which clause 6.(d) it is written that have his increments stopped but not written permanent stoppage of increment. New bi- partite settlement came on 10.4.2002. In which clause 6(f) added as have his increments stopped with or without cumulative effect. There is a provision of increment stoppage but not written permanently stopped in 19.6(d). Shown Ex. 12/2 in which date of increment is written as 1<sup>st</sup> September every year and in Ex.9/5 it is written that increments for December, 91 and December, 92 are stopped permanently. Ex. 9/5 was served on 4.5.1991 and appeal thereof was preferred on 14.8.91. Ex. 9/6 is appellate order dated 18.1.92 and in which the punishment order Ex.9/5 was confirmed. Increment date of workman was also not changed in appellate order.
- 4. *I do not know whether the Disciplinary Authority or Appellate Authority had modified the punishment order in respect of date of increment. As per clause 19.14 of Bi-partite settlement of 1966 disposal of appeal is to be done within 2 months.*
- 5 *M-1 to M-17 documents are not traceable in the bank. Suspension order of the workman was never issued. It is not true bank is making excuse as documents M-1 to M-17 are in favour of workman.”*

17. The management has also examined the witness Shri Shyam Thawardas Samtaney; the then Enquiry Officer at Exhibit-11 who had categorically admitted that:-

- “3. *I state that after my appointment as enquiry officer, I had intimated to second party about time and date of enquiry. I was provided with copy of the notice issued to second party, copy of the suspension order and reply filed by second party workman concerned Mr. Pandya and copy of the charge sheet issued by bank to second party.”*

During his cross examination he had admitted that:-

- “11. *I have done this affidavit to justify the punishment given by the first party bank to workman Shri Ashok Pandya. I had signed the affidavit after I had read out the case record and the contents written in affidavit.*
- 15. *Employees are signing in muster roll. Where there is no signature, bank officer is marking PRESENT or ABSENT or LEAVE. When employee is on unauthorized absent, ABSENT is marked and when employee is on sanctioned leave, LEAVE is marked.*
- 16. *As per charge sheet charge no. 1 it appears that on 23.09.1989 LEAVE is marked in the muster roll and the charge is pertaining to temper the leave mark and not giving leave application.*
- 17. *Defence Representative had asked me to obtain FSL report in respect of disputed hand writing but I had not granted the same. I had recorded in proceedings of inquiry dated 11.06.90 that we will discuss the issue in next date of hearing. On 18.06.90, I had dismissed the demand of D.R. I had*

*taken the time in decision and taken advise from Legal, I.R. (D.A.) on the demand of Defence to obtain FSL report. I had discussed with Head of I.R. After discussions with Industrial Relation Department and then after I concluded that the demand of Defence for obtaining handwriting report from FSL be rejected. In spite of DR had requested after rejecting his demand by me that the FSL report is required to ascertain what was overwritten; I had not considered his demand. On 26.6.90 DR had submitted written application for bringing FSL report but I do not remember whether it was marked D/2. Muster roll is kept in bank's custody and therefore, workman cannot obtain FSL report of disputed handwriting and it is true that only bank can obtain the same.*

19. *I do not confirm that whether the first party bank had issued a suspension letter to the workman or not. If suspension letter of the workman will be available after search, bank will produce the same. It is not like that I had mention about having received the copy of suspension order from the bank in para 3 of my affidavit."*

Shri Samtaney had further filed clarification to affidavit at Exhibit-16 and stated that:-

4. *I have stated in my affidavit that, "I was provided with copy of the notice issued to second party, copy of the suspension order and reply filed by second party workman concerned Mr. Pandya and copy of the charge sheet issued by bank to second party."*
5. *I state that during my cross examination before the Hon'ble Tribunal, I have stated that "I cannot confirm whether the bank had issued suspension order to the workman or not."*  
*In the pursuance I state that thereafter I had verified from the bank and I was informed that the bank had not issued suspension order to Mr. Pandya.*
6. *I state that through oversight, I had mentioned in my affidavit that he was issued suspension order. I had no intention to mislead the Hon'ble Tribunal regarding issuance of suspension order to Mr. Pandya.*
7. *I have filed this affidavit to clarify the statement made in my earlier affidavit and I beg to pardon for the inconvenience caused."*

18. It is noteworthy that workman has not challenged the enquiry and report thereof, therefore Tribunal can go into the validity of enquiry but Enquiry officer's conduct cannot be said to be fair as he denied the workman to dispute the fact of tempering in the attendance register. Therefore Tribunal is bound to see the justification of punishment where enquiry seems to be unfair. From examination of para 17 of the Ex. 11 it is undoubtedly clear that the decision of the Enquiry Officer for rejecting the request of defence to obtain Forensic Science Report on disputed hand writing was not his independent decision but it was fully taken under the influence of the head of the Industrial Relation department which was pleading / representing the case of management before the Enquiry officer. Therefore, it is clear that the Enquiry Officer has acted under the influence of the management and not independently with clean, honest and fair mind. Further it is also clear that Shri Shyam Thawardas Samtaney; the then Enquiry Officer and the management witness had filed a false affidavits in judicial proceedings with a clear intention to justify the punishment order issued by the bank even though he had read out the case record and the contents written in affidavit as per PARA 11 of Exhibit-11. The Ex. 16 is nothing but open admission of perjury on the part of the management witness Shri Shyam Thawardas Samtaney.

19. Therefore, non-production of documentary evidences before this Tribunal pertaining to disciplinary proceedings held against Shri Ashok M. Pandya, refusal on the part of the Enquiry Officer to consider the request of the second party for sending the attendance register for the handwriting expert's opinion or to FSL and making false statement on oath in the proceedings before this Tribunal do not indicate the *bona fides* of the management and therefore this Tribunal can exercise its ample powers to draw adverse inference against the first party.

20. It is settled law of the Hon'ble Supreme Court as well as several Hon'ble High Courts that holding departmental proceedings and recording a finding of guilt against any delinquent and imposing the punishment for the same is a quasi-judicial function and not administrative one. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Thus, while performing the quasi-judicial functions, the Disciplinary Authority is not permitted to give go beyond to governing statutory rules or bi-partite settlement under which the disciplinary proceedings initiated and punishment is to be imposed and the Disciplinary Authority is bound to give strict adherence to the same. The provision of stoppage of increment/s with or without effect was subsequently inserted in the Bi-partite settlement dated 10.04.2002 which is not applicable in the present case as having no retrospective effect. In the present case, the punishment imposed upon the second party being outside the purview of the Bi-partite Settlement dated 16.10.1966, therefore, is a nullity and cannot survive and cannot be enforceable against the second party.

21. The workman preferred a departmental appeal against the said order on 14.08.1991. The Appellate Authority by his order dated 18.01.1992 (Exhibit 9/5) upheld the punishment order dated 04.05.1991 passed by the Disciplinary Authority. The Appellate Authority disposed of the appeal preferred in the matter after a lapse of 5 months. As per clause 19.14 of Bi-partite settlement of 1966 disposal of appeal is to be done within 2 months as admitted by Shri B. R. Patel; witness of the first party, in his cross examination. Therefore, it is undisputed fact that appeal preferred by the workman was disposed of in utter violation of provisions of Bi-partite settlement dated 19.10.1966. Further the Appellate Authority while disposing the appeal concluded that:-

*“Since the material which is required to be examined by the document examiner is limited, the Enquiry Officer has not felt it necessary to obtain the report of Forensic Science Laboratory; moreover, the defence has also not produced the same.”*

Whereas management witness Shri Shyam Thawardas Samtaney had in his cross examination reiterated that:-

*Muster roll is kept in bank's custody and therefore, workman cannot obtain FSL report of disputed handwriting and it is true that only bank can obtain the same.*

Thus the enquiry report and the action/punishment imposed show the total non-application of mind on the part of the enquiry officer as well as Appellate Authority as being violative of clause 19.14 of the Bi-partite Settlement dated 19.10.1966. Thus the appellate order dated 18.01.1992 confirming the punishment order dated 04.05.1991 passed by the Disciplinary Authority cannot be said to be tenable in the eyes of law.

22. In the result, as the enquiry conducted against the second party is neither fair nor proper, the Enquiry Officers presumed to be independent authority is found to be dependent on extraneous elements, therefore, findings of the Enquiry Officer dated 11.02.1991 are perverse and suffer from bias & prejudice. Further the punishment inflicted upon the second party workman is out of purview of Clause 19.6 (d) of the Bi-partite Settlement dated 19.10.1966, and further appellate order is also violative of the Clause 19.14 of Bi-partite Settlement dated 19.10.1966; same are accordingly liable to be quashed and set aside.

23. The learned counsel for the first party in his written arguments Ext. 22 raised the question that the tribunal has no jurisdiction to go beyond the scope of the reference has to confine itself to the enquiry and to the questions referred by the appropriate government. In support of these arguments he has referred Oshiar Prasad V/s Employers in relation to management of Sudamdih Coal Washery of BCCL Dhanbad 2015-1-LLJ 513(SC) wherein the Apex Court held that tribunal cannot make any enquiry in to the questions not specifically referred to it while answering the reference. The tribunal while answering the reference has to confine its enquiry to the questions referred and has no jurisdiction to go beyond the questions or/and the terms of the reference while answering the reference. I do agree to the argument but this judgement does not help the first party though the second party has not challenged the enquiry report but I would like to emphasize that the second party workman has challenged the quantum and legality of the punishment awarded being violative of the Bipartite Settlement between the management and the workmen which has already been discussed in the earlier part of this award. The first party bank also relied upon one more judgement of Hon'ble Supreme Court in State Bank of Bikaner and Jaipur & Omprakash Sharma reported in 2006, II, LLJ Pg. 1046 (SC) wherein the apex court reiterated that Labour Tribunal cannot go beyond the scope of reference. But in this case punishment awarded was excessive of the punishment provided in Bipartite agreement/settlement dated 19.10.1966. Thus this argument does not hold water.

Second argument rendered by the first party advocate is that reference suffers with legal delay and unexpected delay as the second party/workman was punished on 04.05.1995 and he challenged the punishment after lapse of 17 years as he has raised the dispute for the first time in the year 2012.

The bank on the said point relies upon the case of Bhartiya Karmachari Sangh V/s Oil and Natural Gas Corporation and 3 others of Hon'ble Gujarat High Court reported in 2010, II, CLR, Pg. 520, the case of Chennai Metropolitan Water Supply and Sewerage Board and others and T.T. Muralibabu reported in 2014 (141) FLR, Pg. 772 and upon the judgement of Hon'ble Gujarat High Court reported in 2011, II, CLR, Pg. 497 in the case of Sashin and Company V/s Rupa Uka Sakaria since deceased through heir and Anr.

In these judgements it was observed that the issue of limitation or delay and latches should be considered with the reference to the original cause of action and not with the reference to the date on which the order is passed in compliance with the direction.

The bank also relied upon judgement of the Hon'ble Supreme Court reported in 2015, III, CLR Pg. 937 in the case of Prabhakar V/s Joint Director, Sericulture Department & Anr.

The Hon'ble Supreme Court in this case, specifically held that it is now well recognized principle of jurisprudence that a right not exercised for a long time is non-exist. Doctrine of latches is in fact an application of

maxim of equity “Delay defeats equities”. The Hon’ble Supreme Court has after considering all the aspects had dismissed the petition filed by the petitioner.

The first party bank further submitted that in pursuance of the said case and particularly the pursis passed by the worker concerned vide Ex. 18., dated 20.06.2014 inter alia contending that the Union admits the legality and procedures of Departmental inquiry conducted by the first party bank and therefore do not challenge the legality and procedure of the conducting departmental inquiry, further more it is mentioned that the Union challenge the report of inquiry officer dated 11.02.1991 and challenged punishment order dated 04.05.1991. In this pursuance the bank relied upon the judgements of Hon’ble Delhi High Court (DB) in the case of Mahendra Singh V/s Government of NCT of Delhi and Others reported in 2012 (I) LLN, Pg. 748. It was held by High Court that findings in Departmental inquiry if not arbitrary or malafide the findings of inquiry officer, based on evidence and not unreasonable – interference of court, thus, not required.

Learned Counsel of Bank also argued that as the legality of the departmental inquiry admitted by the worker concerned and the procedure was also admitted then in that case, it is clearly proved that, the inquiry was as per the principle of natural justice and the worker concerned was given adequate opportunity for defense, that way also the issue mentioned in terms mentioned in terms of reference is proved.

Learned Counsel of Bank also argued unless the worker concerned proved perversity of the findings of inquiry officer, the Hon’ble Tribunal cannot interfere in the findings of the inquiry officer. In the said case the findings of the inquiry officer is produced at Ex. 7/12 which shows that, the inquiry officer has taken into consideration all the documentary and oral evidence submitted before it and also turned down the plea of sending the attendance register to Forensic Science Laboratory or hand writing expert.

He also relied upon one more judgement of the Hon’ble Gujarat High Court reported in 2009, I, CLR, Pg. 403 in the case of Muljibhai Patel Urological Hospital V/s Arunaben Desai. Wherein Hon’ble High Court has specifically held that “where the workman does not challenge correctness/validity of inquiry, it is not open to the Labour Court to go into findings of inquiry officer”. Considering that the application SCA filed by the Hospital was allowed and the order passed by the Labour Court Nadiad was set aside.

He further relied on one more judgement of the Hon’ble Supreme Court, on the point of “interfering in the findings of inquiry officer” which is reported in 2012, I, CLR Pg. 458 in the case of Loganathan V/s Union of India and others. Wherein Hon’ble Supreme Court held that when the appellant had fully participated in the inquiry and findings recorded by the inquiry officer cannot be said to suffer from any legal infirmity.

In the said matter the worker concerned participated in the departmental inquiry with his defense representative and all the evidence were recorded in their presence. The inquiry officer also considered evidence in detail, produced before it and therefore the findings of the inquiry officer cannot be perverse in any manner.

He further relied upon the judgement of the Hon’ble High Court of Judicature at Jabalpur in LPA No. 122 of 1996 in the case of Central Bank of India and Others V/s Arjun Keer son of Shri Kashiram.

In this case the respondent was inflicted punishment of stoppage of two increments with cumulative effect, which was challenged by the respondent mentioning that the bank authority is not empowered to award this punishment as it was not mentioned in bi-parte settlement, therefore considering the award of the Lower Court and the order of Hon’ble Single Judge, the Hon’ble High Court had allowed the writ petition filed by the petitioner, set aside the judgement of the Hon’ble Single Judge and dismissed the petition filed by the respondent.

He further argued that the case of the worker concerned is quite identical with the case law relied by the bank in Anx. J. Considering the same, it is respectfully submitted by the bank that the action of inflicting punishment of increments by the authority is not illegal as they are empowered to do so.

He further argued that considering all the factual aspects and judgements of the various High Courts and Hon’ble Supreme Court, it is clearly established that the inquiry conducted by the bank was as per the Principle of Natural Justice, the worker concerned was granted adequate opportunity, the findings of inquiry officer was completely based on evidence and therefore the worker concerned is not entitled to any of the relief which is prayed for by him in the present reference and the reference is deserved to be rejected.

As the case was argued by the second party Ashok M. Pandya himself and countered the arguments of the first party by way of referring the apex court judgement in Collector, Land Acquisition, Anantnag V/s Mst. Katigi, Civil Appeal No. 460/1987, (arising out of special leave petition (civil) no. 12980/1986 decided on 19.02.1987 wherein the apex court observed as under:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “Every day’s delay must be explained” does not mean that a pedantic approach should be made. Why not every hour’s delay every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately or on account of culpable negligence or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

He further referred Kuldeep Singh V/s G.M. Instrument Design Development Centre and another Civil Appeal No. of 2010 arising out of Special Leave Petition (C) No. 4137 of 2007 wherein decided on Dec. 03, 2010 wherein the apex court observed as under:

“21. In view of the above, law can be summarized that there is no prescribed time limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is more so in view of the language used, namely, if any industrial dispute exists or is apprehended, the appropriate government “at any time” refer the dispute to a Board or Court for enquiry. The reference sought for by the workman cannot be said to be delayed or suffering from a lapse when law does not prescribe any period of limitation for raising a dispute under Section 10 of the Act. The real test for making a reference is whether at the time of the reference dispute exists or not and when it is made it is presumed that the State Government is satisfied with the ingredients of the provision, hence the Labour Court cannot go behind the reference. It is not open to the Government to go into the merit of the dispute concerned and once it is found that an industrial dispute exists then it is incumbent on the part of the Government to make reference. It cannot itself decide the merit of the dispute and it is for the appropriate Court or Forum to decide the same. The satisfaction of the appropriate authority in the matter of making reference under Section 10(1) of the Act is a subjective satisfaction. Normally, the Government cannot decline to make reference for laches committed by the workman. If adequate reasons are shown, the Government is bound to refer the dispute to the appropriate Court or Forum for adjudication. Even though, there is no limitation prescribed for reference of dispute to the Labour Court/Industrial Tribunal, even so, it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly, when disputes relate to discharge of workman. If sufficient materials are not put forth for the enormous delay, it would certainly be fatal. However, in view of the explanation offered by the workman, in the case on hand, as stated and discussed by us in the earlier paragraphs, we do not think that the delay in the case on hand has been so culpable as to disentitle him any relief. We are also satisfied that in view of the details furnished and the explanation offered, the workman cannot be blamed for the delay and he was all along hoping that one day his grievance would be considered by the Management or by the State Government.”

He further referred Raghubeer Singh V/s G.M. Haryana Roadways Hisar, Civil Appeal No. 8434 of 2014 arising out of Special Leave Petition (C) No. 22847 of 2012 wherein decided on 03.09.2014 wherein the apex court observed as under:

“Raising the Industrial dispute belatedly and getting the same referred from the State Government to the Labour Court is for justifiable reason and the same is supported by law laid down by this Court in Calcutta Dock Labour Board (AIR 1966 SC 282). Even assuming for the sake of the argument that there was a certain delay and laches on the part of the workman in raising the Industrial Dispute and getting the same referenced for adjudication, the Labour Court is statutorily duty bound to answer the points of dispute referred to it by adjudication the same on merits of the case and it ought to have moulded the relief appropriately in favour of the workman. That has not been done at all by the Labour Court. Both the learned single Judge as well as the Division Bench of the High Court in its Civil Writ Petition and the Letters Patent Appeal has failed to consider this important aspect of the matter. Therefore, we are of the view that the order of termination passed by the respondent, the award passed by the Labour Court and the judgement & order of the High Court are liable to be set aside.”

Thus in the light of the observations of the Catena of decisions of the apex court, the arguments of the first party is fit to be ignored saying the nature of the dispute and also punishment awarded violative of Bipartite Settlement,

1966 and also the fact that the necessity of the departmental enquiry as the conduct of the workman was not so material as to order departmental enquiry. In such cases of one day absence or late coming in the office necessitates to deduct one day leave from his leave account.

Next he argued and referred the judgement of Hon'ble Gujarat High Court in C.V. Kotecha V/s Halar Salt and Chemical Works, a special civil application no. 1642/1979 decided on 11.12.1984 wherein the Hon'ble Court referring the apex court judgement in Vedprakash Gupta V/s Mst. Delton Kavil India Pvt. Ltd. AIR 1984 SC Page 914 held that workman is not only an active union worker and vice-president of Jamnagar Mazdoor Sangh who used filthy and abusive language cannot attract the punishment of dismissal. The Hon'ble Court further observed that out of sudden anger such things happen.

In the light of the aforesaid arguments and discussions, it is very much clear that the issues of delay and latches must be seen in the light of the justice and equity and if injustice is likely to be caused, delay must be ignored. In this case the punishment was violative of the Bipartite Settlement 1966; therefore the issue of delay deserves to be ignored. Second the punishment awarded is also against the spirit of justice and equity because the whole matter revolves round the one day absence or late coming of the second party workman in the bank for which bank was at liberty to deduct his one day leave. There is no justification to order enquiry and punishing for the quantum which was violative of the provisions of the Bipartite Settlement 1966, having no retrospective effect. Thus in the light of the aforesaid discussions, I come to the conclusion that the action of the management of Bank of India, Zonal Office, Ahmedabad in stopping of the annual increments for two years permanently of Shri Ashok M. Pandya without giving him reasonable opportunity to hear his view is unjustified as punishment being violative of the provisions of Bipartite Settlement, 1966 and the reasons as given in the award. Thus this **Issue No. 1** is decided in negative against the first party bank and in favour of the second party workman Ashok M. Pandya.

**Issue No. 2:** In the light of the finding of Issue No. 1 the second party workman is entitled for the arrear of back wages affected by the punishment awarded to him. The arrear of said wages shall be paid within two month of the publication of the award.

24. The reference is decided as per the findings of the Issue No. 1 & 2 as above.

PRAMOD KUMAR CHATURVEDI, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1776.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 45/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-12012/212/2004-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1776.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 19.08.2016.

[No. L-12012/212/2004-IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,

Dated 12<sup>th</sup> August, 2016

**Reference: (CGITA) No. 45/2005**

The Zonal Manager,  
Bank of India,  
Zonal Office, Ahmedabad Zone,  
Bank of India Building, Bhadra,  
Ahmedabad-380001

...First Party

**V/s.**

Shri Ashok M. Pandya,  
16/A, Kisan Complex,  
Maninagar Char Rasta,  
Ahmedabad- 380008

...Second Party

**Appearance :**

For the First Party-Management : Mrs. Meena Shah  
Shri J. D. Chalishajar  
For, Shri D. C. Gandhi, Associates

For the Second Party-Workman : Shri Ashok M. Pandya  
(Delinquent workman)

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-12012/212/2004-IR (B-II) dated 04.05.2005 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

*“Whether the action of the management of the Zonal Manager, Bank of India, Ahmedabad in awarding the punishment of removal of services of Shri Ashok M. Pandya, Ex- Computer Operator, Naroda branch, Ahmedabad by way of ‘Compulsorily Retirement’ is legal, proper and justified? If, not, to what relief the workman concerned is entitled to?”*

2. Both the parties were served by registered notice and also being informed by the Central Government. The Second Party workman concerned Ashok M. Pandya, submitted the **Statement of Claim, Exhibit-2** alleging that he was appointed as accounts clerk on 1.09.1977 in the first party bank, Bank of India, Naroda branch, hereinafter referred to as ‘BANK’ and lastly he was working there as Computer Operator in the bank. He worked sincerely and honestly during the whole service. For last ten years; he had also been an Executive Committee Member of Bank of India Staff Union, Ahmedabad & Gujarat Branches and thus, actively associated with the union activities.

Since 18.02.2002 he had been working as Computer Operator in Naroda branch of the Bank and was discharging his duties sincerely, honestly and diligently without any grievance to anybody including customers concerning the Bank. However, to the great shock and surprise of the Second Party herein, Shri Rakesh D. Dogra, an officer working at Naroda Branch filed a false, frivolous and vexatious complaint against him as well as against Mahendrasinh Raol, Staff - Clerk, Vatva Industrial Estate Branch, Ahmedabad before the Manager, Bank of India, Naroda Branch, Ahmedabad of the Bank on 05<sup>th</sup> March, 2002 alleging assault and threat to his life. The said complaint was investigated by the Investigating Officer appointed by the Bank. Thereafter, the Second Party workman Shri Ashok M. Pandya was served with a Charge Sheet dated 30<sup>th</sup> May, 2002. The charge-sheet is reproduced as under:-

**Charge: - 1**

*“On 05.03.2002, while you were on duty at about 1.30 p.m., when staff officer Shri Rakesh Dogra went to the counter of the staff clerk, Shri H. C. Hingol, for enquiring about the name of the payee of the certain cheques received in clearing and was talking to Shri Hingol, you abruptly caught hold of Shri Dogra by your hand, physically forced him to sit on the stool, threatened him and shouted at the top of your voice in Hindi, in the presence of staff members viz. Shri T. K. Parmar. Staff officer, Shri H. C. Hingol, staff computer operator and Shri N. C. Gilder, staff officer stating as under:-*

*“नरोडा से भाग जा तुझे छोड़ेंगे नहीं। इस माहौल में तेरा पता भी नहीं लगेगा। तेरेको मार देंगे। मरवा देंगे। तू जो करता तू कर ले। तोड़ ले। मेनेजर और पुलिस भी जो तोड़ना है तोड़ ले।”*

*Listening this, when Shri Dogra stated that he will file a complaint against you to which you reacted and once again threatened him shouting in loud voice in Hindi stating as under:-*



"तेरे को तो इस नरोडा में रहने नहीं देंगे. इस माहौल में नरोडा से भाग जा. मैनेजर से नहीं बल्कि पुलिस से भी कर लेना. जो तोड़ना है तोड़ ले मैनेजर और पुलिस. तुझे बस छोड़ेंगे नहीं. मार देंगे."

*After this, Shri Dogra went to the cabin of the Manager and narrated the incident.*

*Your aforesaid act of misbehaving with Shri Dogra, staff officer, physically manhandling and threatening him to kill and also shouting in the branch premises at the officials of the branch, if proved amounts to gross misconduct in terms of Clause 19.5(c) of the 1<sup>st</sup> Bipartite Settlement dated 19.10.1966.*

*Clause 19.5(c) reads as under:-*

*"Drunkness or riotous or disorderly or indecent behavior on the premises of the bank",*

**Charge: - 2**

*On 19.02.2002, while you were on duty in the branch, you left the branch premises without intimation / prior permission at around 1.30 p.m. and reported back at 2.15 p.m. When Shri Gilder, staff officer inquired about your absence from the seat, you started shouting in the banking hall in Gujarati stating as under:-*

"મેનેજરએનામનમાંજુસમજેછે? તેમનીનોકરીતોકરતાનથી અમેમેનેજરનાગુલામનથી  
મેઆજસુધીગણામેનેજરોજોઈલીધાછે.  
મેંબેમેનેજરોનેમાર્યાપણછે. અનેમારાબેઇન્ક્રિમેન્ટ(Increments) પણગયેલછે.  
જોતેકઈપણવધુકરશેતોબેન્કનુંકામકાજઠપકરાવીદઈશ."

*Your aforesaid act of leaving branch premises without intimation / prior permission and exhibiting indecent behavior of shouting at the officials of the branch in the banking hall, if proved, amounts to gross misconduct in terms of Clause 19.5(c) and 19.5(e) of the 1<sup>st</sup> Bipartite Settlement dated 19.10.1966 as amended from time to time.*

*Clause 19.5(c) reads as under:-*

*"Drunkness or riotous or disorderly or indecent behavior on the premises of the bank"*

*Clause 19.5(e) reads as under:-*

*"Willful or disobedience of any lawful and reasonable order of the management or of superior"*

*Your past record is also found to be unsatisfactory. Despite the various punishments awarded to you, you have failed to improve yourself. In the past you have been awarded the following punishments:*

- (i) *Punishment of stoppage of annual increment for a period of two years permanently in terms of clause 19.6(d) of the first Bipartite Settlement dated 19.10.1966 vide punishment order dated 04.05.91 for your acts of misconducts leveled and proved against you vide charge sheet dated 13.12.1989.*
- (ii) *Punishment of warning vide order No. ZO/IRD/421 dated 30.10.93 for the misconducts leveled and proved against you vide charge sheet No. ZO/IR/206 dated 06.08.92 on the basis of your having admitted the same vide your letter dated 29.05.93 and assuring of your good conduct and behavior in future.*

3. The second party workman further alleged that aforesaid Rakesh D. Dogra also lodged a complaint for the incident of 05.03.2002 on the same day i.e. on 5.03.2002 in the Naroda Police Station, Ahmedabad City; wherein the police registered FIR vide CR No.II/3077/02 dated 06th March, 2002, investigated in to the crime and after recording the statements of witnesses submitted the charge sheet u/s 506(1), 294(b) and 114 of the Indian Penal Code at criminal case no. 888 of 2002 against Shri Ashok M. Pandya and Shri Mahendrasinh Raol. It is noteworthy that the bank did not charge sheet Shri Mahendrasinh Raol. It is further alleged that first party also appointed A. M. Makim – staff officer as Enquiry Officer on 30.05.2002 to hold disciplinary proceedings against Ashok M. Pandya. Ashok M. Pandya orally, as well as in writing also requested on several occasions the Enquiry Officer and the Disciplinary Authority not to proceed further with the charge sheet because the provisions of clause 19.4 of the Bi-partite Settlement which prohibits the right of the Management to proceed further, in case where steps were taken to prosecute Ashok M. Pandya for the alleged incident of 05.03.2002 within a year of commission of the offence i.e. prior to 05.03.2003. The provisions of clause 19.4 of the Bipartite Settlement dated 19.10.1966 is reproduced as under:-

"If after steps have been taken to prosecute an employee or to get him prosecuted, for an offence, he is not put on trial within a year of the commission of the offence, the management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct", as defined below; provided that if the authority which was to start prosecution proceedings refuses to do so or come to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions

set out below in Clause 19.11 and 19.12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination with three months' pay and allowances in lieu of notice as provided in Clause 19.3 supra. If within the pendency of the proceedings thus instituted he is put on trial such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in Clause 19.3 above shall apply".

4. It is further alleged that Enquiry Officer turned down his submission and continued with the enquiry and held the charges proved after recording the evidences of the Shri Rakesh D. Dogra, Shri N. C. Gilder and Shri T. K. Parmar (all officers of the bank). Thereafter the second party workman was issued a show-cause punishment notice dated 19.08.2002. Since the departmental proceedings were held in hasty manner. Therefore, the Second Party was constrained to approach the Hon'ble High Court of Gujarat for staying the Departmental Enquiry being, in fact, in violation of the provisions of Clause 19.4 of the Bi-partite Settlement. Thereupon, the Hon'ble High Court of Gujarat restrained the First Party Bank herein not to proceed further pursuant to the impugned notice dated 19th August 2002. Since the Metropolitan Magistrate acquitted Ashok M. Pandya and Shri Mahendrasinh Raol for want of evidence on 18.09.2002, Ashok M. Pandya withdrew the petition from High Court.

5. It is also alleged that in the matter in question a memo calling for explanation was served on him on 09.03.2002 wherein explanation thereof was submitted by him to the Chief Manager (C.S., Ahmedabad Zonal Office) along with the copy of F.I.R. registered as CR No. II/3077/02 dated 06th March, 2002 filed by Shri Rakesh Dogra, highlighting the facts that explanation was sought without supplying copies of the statement given by Shri Dogra, Shri Gilder and Shri Hingol and other officials of the Bank to the Investigation Officer; which is also against the principle of natural justice.

6. It is also alleged that the Disciplinary Authority acted with predetermination and prejudice against Shri Ashok M. Pandya.

7. It is further alleged that despite order of acquittal passed by Magistrate in criminal case into the matter the first party issued a letter to Ashok M. Pandya to appear before him for personal hearing on 01.11.2002 @ 11.00 am. It is also noteworthy that despite the marriage of the daughter of Ashok M. Pandya was scheduled to be performed on 19.11.2002 and also ignoring the acquittal from the Court of Law, thus circumvented the binding provisions of Para 505 of the Shastry Award. The fact of acquittal was dealt loosely by the Disciplinary Authority as well as by the Appellate Authority while passing their orders. Disciplinary Authority observed categorically in its order which is reproduced as under:-

“(i) With regards to your submission that you should be granted more time for submitting your explanation in reply to the findings and the proposed punishment because of Diwali festival holidays and the marriage of your daughter scheduled on 19.11.2002. I may state that there is no substance in your contention that you needed time till 05.12.2002 because of Diwali festival holidays and the marriage of your daughter, as the SCPN has been issued to you way back on 19.08.2002 and you have been given sufficient time for making your submissions, if any and I am satisfied that the time granted to you for making was more than sufficient as copy of the findings was already furnished to you along with the SCPN. Consequently, I do not find any reason to delay in passing the final order.

(ii) With regards to your submissions to why you had to approach the Hon'ble High Court of Gujarat, I may state that the same is not relevant here and accordingly, I am not offering any comments on the same. **It is also immaterial that you have been acquitted by the criminal court.** Please note that the order by the criminal court have been passed much after the date of completion of the departmental enquiry proceedings initiated against you and also after the receipt of the findings of the E. O. by the undersigned wherein the charges leveled against you vide charge sheet dated 30.05.2002 have been conclusively proved against you. Please note that disciplinary action proceedings are quasi-judicial in nature and standard of proof required is not necessarily be beyond doubt. Preponderance of probability is sufficient to prove the charge. With regards to your claim that Shri Ahuja staff clerk, Naroda branch was declared hostile, I may state that it is immaterial as to why he was declared hostile and what his deposition before the criminal court is. The matter is required to be examined by the Disciplinary Authority independently and the punishment, if any, is to be awarded on the basis of the finding of the E. O., the nature, gravity and seriousness of the charges alleged and proved against you and as such his deposition before the criminal court does not help you in any way as the E. O. in his findings has come to the conclusion that the Charge No. I and II are conclusively proved.

(iii) With regards to your contention that since there is no independent witness other than the evidence of the complainant, the charge No. II cannot be said to be proved is devoid of merit as the E. O. has come to the conclusion after having discussed deposition of M.W. 2 and the document ME-8 which is dated 19.02.2002 i. e. of a date prior to the date of incident that took place with Mr. Dogra and is the subject matter of charge

No. I. Since the main charge is about the incident that has taken place with Mr. Dogra, Staff officer, Naroda branch, the deposition of ME-2 is to be seen in the same perspective.”

8. It is further alleged that a reference has been made in the charge sheet about the bad past record of the Second Party regarding punishment order of warning dated 30.10.93, which was never served upon the Second Party. Therefore, the second party demanded an acknowledged copy of the Service of such punishment during the course of enquiry but to no result.

9. The Disciplinary Authority awarded the punishment of compulsorily retirement from the services with superannuation benefits on 11.11.2002 to the second party workman who in turn preferred an appeal on 19.12.2002 before the Appellate Authority; the same was rejected on 25.02.2002. Thus the Appellate authority had violated the provisions of clause 19.14 of the Bipartite Settlement dated 19.10.1966 while disposing the appeal beyond the period of two time months.

10. It is pertinent to note here that the Authorities of the Bank did not adhere to the Para 505 of the Shastri Award which reproduced as under:-

*"As already stated, we have tried to follow the regulations prescribed by the Sen Tribunal with modification. We are very much particular that a verdict of acquittal passed by a competent court of law should not be lightly thrown aside by the Bank management in trying to institute departmental inquiries after the acquittal, as it would amount to a double trial in respect of the same offence. We have occasionally come across instances where a Bank management has persisted in its application under section 33 inspite of an acquittal by an ordinary court of the land after a full trial. The decisions of our courts are entitled to the highest respect and the bank managements should reinstate an employee who is honorably acquitted and pay him his full salary and allowances. The acquittal should not be lightly challenged by departmental inquiries for disciplinary action unless the bank management feels that there has been such a gross violation of the departmental rules as to necessitate a further inquiry in the interest of the institution on matters other than those in respect of which he has been already acquitted. If after the departmental inquiry, the management still feels that the employee cannot continue in its service it can terminate his services only on payment of three months' salary and allowances in lieu of notice".*

11. It is further alleged that the Disciplinary Authority ignored and brushed aside the order of acquittal passed by the Criminal Court. The same was followed by the Appellate Authority acting in violation of the provisions of the Para 505 of Shastri Award and the provisions of the Bi-partite Settlements arrived at from time to time.

12. The first party submitted **written statement vide Exhibit-4** admitting the averments of Statement of Claim regarding the incident of 19.02.2002 and 05.03.2002, issuance of charge sheet, registration of FIR, submission of the charge sheet by the police, holding the departmental proceedings, award of punishment and rejection of appeal of the second party workman and denied the rest of the averments made in Statement of Claim. The first party asserted that disciplinary proceedings were conducted against the delinquent workman observing the principles of natural justice and also affording reasonable and equal opportunity to the second party workman with the help of defence representative (D.R.). It is also further asserted that finding of the Enquiry Officer was based upon the material available on the record of the enquiry; therefore, the second party workman has no basis to challenge the punishment order awarded to him.

13. On the basis of the pleadings of both the parties following questions of issues are to be addressed by this Tribunal by way of this Award.

(i) Whether the action of the management of the Zonal Manager, Bank of India, Ahmedabad in awarding the punishment of removal of services of Shri Ashok M. Pandya, Ex- Computer Operator, Naroda branch, Ahmedabad by way of 'Compulsorily Retirement; is legal, proper and justified?

(ii) If, not, to what relief the workman concerned is entitled to?

14. In support of the pleadings, the second party workman submitted his affidavit **Exhibit-5** alongwith documents vide list **Exhibit-6:-**

1. Complaint lodged by Shri Dogra to the bank and police authority and charge sheet issued by the bank and police authority;
2. Supreme Court judgment ARCG union v. S H Shah;
3. Order of the Gujarat High Court;
4. Correspondence with Disciplinary Authority;
5. Clause 19.1 to 19.14 of the BPS dated 19.10.1966 and Para 505 of the Sastry Award;

6. Enquiry proceeding dated 09.07.2002;
7. Judgment of Metropolitan Magistrate;
8. Supreme Court judgment dated 10.05.2006;
9. Summon issued by the EO dated 03.11.1999;
10. Appeal dated 28.09.2002 and reminder dated 29.04.2004;
11. Letter to DA dated 04.07.2002;
12. Complaint of Shri Dogra dated 05.03.2002, 07.03.2002, DE-6 and DE-8;
13. Gujarat High Court judgment in SCA 1310 of 1974;
14. Minutes of personal hearing dated 08.11.2002 and copy of marriage invitation card of Shri Ashok M. Padya's daughter;
15. The first party also submitted documents in support of their pleadings which are as under:-
  1. Memorandum calling for explanation dated 29.4.2002;
  2. Reply to memorandum calling for explanation dated 13.05.2002;
  3. Memorandum enclosing charge sheet dated 30.05.2002;
  4. Enquiry Proceedings along with documents ME-1 to ME-20 and DE-1 to DE-8;
  5. Written arguments submitted by Defence Representative dated 26.07.2002;
  6. Written arguments of the Presenting Officer dated 25.07.2002;
  7. Findings of the Enquiry Officer dated 31.07.2002;
  8. Show cause / Punishment notice dated 19.08.2002;
  9. Punishment order dated 11.11.2002;
  10. Appeal filed by Ashok M. Pandya to the Assistant General Manager dated 19.12.2002;
  11. Appellate Order dated 19.02.2002.
16. Before leading the evidences, the first party application vide Exhibit-10 filed a pursis and prayed that while deciding present reference, if this Tribunal comes to the conclusion that the enquiry held against the concerned workman was not in accordance with the principles of natural justice and if the domestic enquiry is vitiated, then the opportunity be given to the Bank to justify its action so taken against the concerned workman by leading evidence before this Tribunal. The first party, by filling another pursis vide Exhibit-11 prayed that the second party workman in his affidavit has dealt with all the points including the punishment imposed upon him but this Tribunal will be required to decide the preliminary issue as to the propriety of the domestic enquiry and the affidavit of the second party workman may only be considered at this stage for the point of validity of the enquiry.
17. The second party workman also submitted preliminary objection as to legality, authority and validity of issuing charge sheet dated 30.05.2002 and to quash and set aside the disciplinary proceedings conducted in the matter of charge sheet dated 30.05.2002 issued by the first party during the pendency of criminal trial of the second party workman. The second party workman Ashok M. Pandya moved the application to decide the objections which are the matters to be examined after deciding the propriety of the domestic enquiry held by the first party bank and conducted by the Enquiry Officer Shri A. M. Makim against him.
18. Second party Ashok M. Pandya has alleged vide **Exhibit-5** that the domestic enquiry held and conducted against him is without following the principles of natural justice and without affording reasonable opportunity to him to defend himself against the charge sheet dated 30.05.2002 by not allowing to examine defence witnesses as per the list provided during the enquiry proceedings and not issuing summon to those witnesses who were bank's staff and also not allowing to cross examine management witness Shri Bharat Bhushan who produced several documents marked ME-7 to ME-20 and the enquiry was conducted in haste manner having bias against him and Disciplinary Authority did not allow him time for personal hearing on his reply to the show cause punishment notice.
19. On the basis of Exhibit-11 moved by the first party and Exhibit-13 moved by the second party workman; my predecessor Mr. Binay Kumar Sinha framed the following issues/points for redressal:-
  - (i) Whether the principles of natural justice was followed in conducting the domestic enquiry;

- (ii) Whether reasonable opportunity was granted by the E. O. to the delinquent to defend himself against the charges;
- (iii) Whether the report of the Enquiry Officer is perverse?

20. On 06.03.2013 my predecessor Mr. Binay Kumar Sinha decided the point No. (i) and (ii) in negative and also the departmental enquiry and its report dated 03.07.2002 as perverse concluding that the enquiry officer failed to examine evidence of both the sides meticulously and appears to have based his finding on hypothesis and thus my predecessor Mr. Binay Kumar Sinha held the entire domestic enquiry vitiated and further directed the first party to justify its action so taken against the delinquent (second party) by producing fresh materials and evidence before this Tribunal.

21. It is noteworthy to point out here that in spite of allowing the pursis moved by the first party **Exhibit-11** to lead evidence, in case enquiry is vitiated by my predecessor Mr. Binay Kumar Sinha; the first party management challenged the interlocutory order of vitiating entire domestic enquiry dated 06.03.2013 passed by my predecessor before the Hon'ble High Court of Gujarat by filing Special Civil Application No. 8452 of 2013; wherein the Hon'ble High Court rejected the petition vide its order dated 23.12.2014. The first party also preferred Letters Patent Appeal No. 1001 of 2015 in Special Civil Application No. 8452 of 2013; same was disposed of on 22.06.2015 by the Division Bench of the Hon'ble High Court of Gujarat; confirming the order of Hon'ble Single Judge as well as the order dated 06.03.2013 passed by this Tribunal. Thus the order of this Tribunal dated 06.03.2013 attained finality being not further challenged in the Apex Court.

22. Thereafter, both the parties were invited to lead evidence a fresh before this Tribunal. The first party management **examined two witnesses** namely Shri Nalinkant Chandrakant Gilder and Shri Tansukhlal Kantilal Parmar both officers of the **first party management**. The second party workman Ashok M. Pandya in reply to the management evidences filed his affidavit/examination in chief vide lists **Exhibit-33** and also filed documents **Exhibit-31, Exhibit-34 and Exhibit-35** listed below:-

Exhibit No	Particular	Date
<b>31</b>	Certified copy of deposition given by Shri N. C. Gilder before Metropolitan Magistrate Court No. 18, Ahmedabad	12.08.2002
<b>34/1</b>	Complaint of Rakesh Dogra to bank	05.03.2002
<b>34/2</b>	Complaint of Rakesh Dogra to Police	05.03.2002
<b>34/3</b>	Intimation given by Rakesh Dogra to bank for filling FIR	07.03.2002
<b>34/4</b>	Copy of the deposition dated 03.09.2002 of Shri T. K. Parmar before Metropolitan Magistrate Court No. 18, Ahmedabad	03.09.2002
<b>34/5</b>	Copy of the final order dated 18.09.2002 passed by Hon'ble M. M., Court No. 18, Ahmedabad in the criminal complaint filed by Rakesh Dogra	18.09.2002
<b>34/6</b>	Statement of Shri H. C. Hingol dated 11.04.2002 recorded by investigation officer of the bank	11.04.2002
<b>34/7</b>	Copy of Sastry Award Para:-505	
<b>34/8</b>	Copy of Sastry Award Para:-519	
<b>34/9</b>	Copy of Clause 19.4 of the First Bi-partite settlement dated 19.10.1966	
<b>35</b>	Certified copy of the deposition dated 09.08.2002 of Shri Manoharlal Khushaldas Ahuja Metropolitan Magistrate Court No. 18, Ahmedabad	09.08.2002

### FINDINGS

23. The first party management witness Shri Nalinkant Chandrakant Gilder filed his affidavit/ examination in chief **Exhibit-29** and reiterated on oath the facts narrated in Written Statement in respect of charge no. 1 and charge no. 2 without emphasizing the allegations shown in the charge sheet, simply stating that he had given statements before the Investigation Officer Shri P. J Naik on 12.04.2002 and the Enquiry Officer had also recorded his statement on

04.07.2002 and 05.07.2002. His testimony is not supported with any documentary evidences and therefore, it is not safe to rely upon that oral testimony of MW-1 as he in his cross examination stated as under:-

*"I have come with the enquiry report along with documentary and oral evidence given during the course of enquiry. This is my affidavit along with my signature. **I have not filed any document with this affidavit.** There are so many trade unions in the Bank of India. I and T. K. Parmar and one Mr. Dogra are the members of Bank of India Officers Union. It is true that Second Party Ashok M. Pandya was the member of Bank of India Staff Union.*

*I had been posted with Ashok M. Pandya from 18.02.2002 to about two years. During this period Ashok M. Pandya misbehaved with me. I made complaint of the said behavior to Bank's higher authorities on 18.02.2002 and 05.03.2002. Bank instituted enquiry on my complaint against Ashok M. Pandya wherein Ashok M. Pandya was compulsorily retired.*

***I do not remember that Ashok M. Pandya have ever misbehaved with me or any other Bank employees or Bank's customers.***

*I do not remember as to when the Bank Manager sent the information to the Regional Office as well as any other higher authorities regarding informing the Bank on 19.02.2002 from the Bank Branch without permission.*

*Pandya abused the Branch Manager on 19.02.2002 which is as under:-*

*"मैनेजर उनके मन में क्या समझते हैं वो अपनी नौकरी तो करते नहीं हैं, हम मैनेजर के गुलाम नहीं हैं. मैंने दो मैनेजरों को मारा है. मैनेजर मेरे खिलाफ कार्यवाही करेंगे तो बैंक का काम ठप्प करा दूँगा."*

***This is true that despite aforesaid threat; Ashok M. Pandya did not attempt to stop the working of Bank.***

*I have been the member of Bank of India Officers' Association. S.P. workman Ashok M. Pandya had been the member of All India Bank of India Employees Association. Both these Association have cordial relations.*

***Rakesh Dogra never made any complaint to the Bank Authorities or Police regarding the incident of 5<sup>th</sup> March, 2002 as mentioned in the affidavit.***

***I was never examined by the Police in any criminal case regarding the incident of 19.02.2002. It is false that I had avoided stating the incidents before Police. Bank's enquiry officer examined me and other witnesses. But I do not know who they were.***

***I was summoned by the Criminal Court for evidence regarding the incident of 19.02.2002 where I deposed against Mr. Ashok M. Pandya. In that criminal case Rakesh Dogra was the complainant First Informant. I do not remember as to whether Rakesh Dogra accused how many persons and who were they.***

*I do not remember as to how many persons were there at the time of incident of 05.03.2002 was occurred / happened in the Banking Hall / Counter. **The space between the counter of Pandya and Dogra was 1½ to 2 feet.** There were 5 computer counters in one row. The distance between Pandya and my counters was 8 feet. There was Cash Cabin just right of Pandya's counter. **Later he said that on the right side of Pandya one bank employee Hingol was having his desk.** In the Hingol's right side who was sitting I don't remember. Thereafter there was Cash Counter.*

*I don't remember, "What happened in the criminal case."*

*Rakesh Dogra joined in the branch after transfer from Moga Branch of the Bank in Punjab. I don't remember as to when Rakesh Dogra joined in the Naroda Branch from Moga Branch. I also don't remember as to when Rakesh Dogra was transferred from Naroda Branch.*

***This is wrong to say that I ever misappropriated the money of Bank for some period where I was punished in a departmental enquiry.***

*This is not true that there were never any incident like 19.02.2002 or 5.03.2002 happened and I took action under the pressure of the Bank Officers Union.*

***This is not true that I made complaint against Pandya with an ill intention of getting Dogra transferred to his Home Zone."***

25. Similarly, Shri Tansukhlal Kantilal Parmar also reiterated in his affidavit/ examination in chief **Exhibit-30** stated on oath in the same manner as narrated by Shri Nalinkant Chandrakant Gilder in respect of charge no. 1 and did not uttered a single word in respect of charge no. 2; but in his cross examination he stated as under:-

*"I had been posted in Naroda branch of Bank of India since 8.10.2001 to 30.11.2004 as Junior Manager. I do not know the details of charge sheet served to Mr. Pandya workman. I have sincerely read over the affidavit. My statement was recorded in the departmental enquiry made against Pandya. I was examined in the departmental enquiry in to the complaint made by one Rakesh Dogra. Rakesh Dogra made two complaints into the same incident, one to Bank Authorities and other to Police.*

*My statements were recorded in departmental proceedings as well as in Magistrate Court into the complaint of Rakesh Dogra. I attended the court on duty for giving evidence.*

*I have not read the Bank Officers' Service Conduct Rules. I do not remember as to whether all Bank officials who were witness in Rakesh Dogra's complaint case come to the Bank and put the signature on attendance register and left thereafter to Court.*

*Said incident happened on 5.03.2002 at about 1.30PM. At that time there were numbers of bank customers in the branch present in significant numbers. There were 5 bank personal present in the branch of 30X30 feet. There are 5 computer counters but only three computer operators were there. There were three cash counters but only two cash counters were manned. Besides aforesaid 5 personal, I was sitting on saving counter. Whole incident took place for 15 minutes. Now he says that N. C. Gilder was also sitting in hall. Dogra was also there.*

*X X by Court.*

*I was busy in my official work. डोगरा कह रहा था की तमीज़ से पेश आओ. उस समय पण्ड्याजी डोगरा को जबरदस्ती बिठाल रहे थे. मारा नहीं था. कोई गाली भी नहीं दी थी, किसी प्रकार की. डोगरा को कोई चोट भी नहीं आई थी. पण्ड्याजी ने कहा था कि इस जगह से चले जाओ वरना तेरा पता भी नहीं चलेगा.*

*पण्ड्याजी को मैं ब्रांच मे कार्य करने से ही जानता हूँ. पण्ड्या जी कभी भी ब्रांच मे या अन्य कहीं मेरे सामने किसी से बदतमीज़ी नहीं की.*

*आमतौर पर पण्ड्याजी एक शरीफ कर्मचारी थे. मैंने डोगरा से पण्ड्याजी द्वारा किये गए व्यवहार की कोई जानने या जांच करने की कोशिश नहीं की.*

*डोगरा थाने रिपोर्ट करने किस के कहने पर गया नहीं मालूम.*

*X X by Pandya.*

*पण्ड्याजी के काउंटर के बाईसाइड मे H. C. Hingol बैठते थे. उसके साइड मे J. K. Solanki बैठता था. पण्ड्याजी के दाई साइड मे केश काउंटर पर R. A. Khakhi बैठता था. मुझे पता नहीं की पण्ड्या के अलावा M. R. Raol भी क्रिमिनल केस में अभियुक्त था.*

*मैंने open Court मे Raol को नहीं पहचाना था और न देखा था.*

*I do not know as to why Bank Management took action against Pandya only while Police submitted charge sheet against Raol besides Pandya.*

*It is wrong to say I conspired with Dogra & Branch Manager to implicate Pandya in criminal case as well as in departmental proceedings.*

*To Court.*

*If my senior stops me to argue and ask in loud manner to sit down; it will not be treated as misconduct."*

26. On the other hand, the second party workman Ashok M. Pandya in reply to the management evidence filed his affidavit/examination in chief **Exhibit-33** stated that:-

- First party had examined two witnesses who were member of officer's association;
- No subordinate staff and/or independent witness like customers present in the banking hall at the time of alleged incident were produced as witness by the first party;
- Denied all the allegations leveled in the charge sheet under which the punishment was awarded;
- There were 17 employees were present in the banking hall and performing their respective duties but except two officers none of the subordinate staff was examined by the first party management;
- H. C. Hingol was working on his adjacent left side counter at the distance of about one foot;

- Identical allegations were made by Shri Rakesh Dogra, officer of the bank against one Shri Mahendrasinh Raol and Shri Ashok M. Pandya into the incident of 05.03.2002 but the first party did not take cognizance of alleged misconduct committed by Shri Mahendrasinh Raol although he was similarly situated;
- Witness of the first party management Shri Nalinkant Chandrakant Gilder and Shri Tansukhlal Kantilal Parmar were also witnesses in the criminal trial into the FIR lodged by Shri Rakesh Dogra and both have identified Shri Mahendrasinh Raol and Ashok M. Pandya as accused in court room;
- Regarding mention of past record in the charge sheet, Ashok M. Pandya clarified that one punishment order dated 04.05.1991 is pending for adjudication and another punishment order surreptitiously placed on record without having been served upon him and services of notices and orders in mandatory under the provisions of Para 519 of Sastry Awards;
- He had no source of income and not getting any remuneration from any source; except pensionary benefits.

Second party workman Ashok M. Pandya in his cross examination stated as under:-

*"I was terminated from services after departmental enquiry without giving due opportunity of hearing. My services were ended by way of compulsory retirement on 11.11.2002.*

*It is true that retiral benefits were paid to me but gratuity and provident fund was transferred in my loan account without seeking my permission. I was sanctioned pension in 2007 with all arrears. I became member of Nav Gujarat Mazdoor Union five years back. I do defend cases of this union in labour courts whenever asked. But I do it without remuneration. I did not apply for any employment after the year 2002. The contents of Para 6 are not mentioned in my statement of claim but they are explanatory of my statement of claim."*

**It is noteworthy** to observe here that in cross examination of Ashok M. Pandya; the Learned Counsel for the first party management has not put any question regarding charges of misconduct leveled into the charge sheet in question. Therefore, the statement of the second party workman on oath denying the misconducts leveled into the charge sheet against him is uncontroverted.

27. Thus from the perusal of cross examination of First Party witnesses, their evidences do not inspire confidence. Same are false and concocted.

28. From bare perusal of the document at **Exhibit-34/5** of the record of the enquiry it is established that for the alleged incident of 05.03.2002, a criminal complaint u/s 506(1), 294(b) and 114 of the Indian Penal Code was registered at Criminal Case no. 888 of 2002 against Shri Mahendrasinh R. Raol and second party workman Ashok M. Pandya and on 18.03.2002; both the accused were acquitted u/s 248(1) of CrPC, from the offences charged u/s 506(1), 294(b) and 114 of Indian Penal Code. In this acquittal order the Magistrate had recorded his finding that no individual witness was examined by the prosecution and MW-2 Shri Tansukhlal Kantilal Parmar admitted that he was very busy in his work at the time of incident and could know the incident only on the voice of Dogra. Thus, this witness had not heard the voice of accused persons. Thus his evidence being heresay cannot be said to be admissible.

29. From bare perusal of the document at **Exhibit-34/6** of the record of the enquiry and cross examination of the MW-1 and MW-2, it is crystal clear that Mr. H. C. Hingol who was sitting adjacent to Ashok M. Pandya has negated the occurrence of alleged incident dated 05.03.2002 before the Investigation Officer of the first party bank.

30. Documentary evidence filed at **Exhibit-34/7**; the copy of the Para 505 of the Sastry Award which is not disputed and also binding on both the parties makes it clear that **this Tribunal has to bear in mind that a verdict of acquittal passed by a competent court of law should not be lightly thrown aside by the Bank management in trying to institute departmental inquiries after the acquittal, as it would amount to a double jeopardy in respect of the same offence. The decisions of our courts are entitled to the highest respect and the bank managements should reinstate an employee who is honorably acquitted and pay him his full salary and allowances.** The acquittal should not be lightly ignored in departmental inquiries for disciplinary action unless the bank management feels that there has been such a gross violation of the departmental rules as to necessitate a further inquiry in the interest of the institution on matters other than those in respect of which he has been already acquitted. If after the departmental inquiry, the management still feels that the employee cannot continue in its service it can terminate his services only on payment of three months' salary and allowances in lieu of notice".

31. Documentary evidences filed at **Exhibit-34/9** is a copy of binding clause 19.4 of the first Bipartite Settlement dated 19.10.1966 from which it is crystal clear that it was not open for the first party to deal with second party workman Ashok M. Pandya as if he has committed an act of "gross misconduct" for the alleged incident of 05.03.2002 when steps to prosecute Ashok M. Pandya was already taken on 05.03.2002 and criminal trial was already begun within a year of commission of the offence. Therefore, I believe that the action of the first party management to issue a charge



sheet dated 30.05.2002 into the allegation of incident of 05.03.2002 to the second party workman Ashok M. Pandya was in utter violation of binding clause 19.4 of the first Bipartite Settlement dated 19.10.1966.

32. Documentary evidences filed at Exhibit-35 is a certified copy of the examination chief and cross examination of Shri Manoharlal Khushaldas Ahuja dated 09.08.2002 in the matter of Criminal Case no. 888 of 2002 wherein the witness was declared **HOSTILE**.

33. From bare perusal of the oral and documentary evidences before this Tribunal following facts apparently emerged out:-

- (i) Shri Rakesh Dogra had made simultaneous complaint for the incident of 05.03.2002 to the bank authority as well as to the police;
- (ii) Witnesses examined by the first party before this Tribunal was also examined in criminal trial in the year 2002;
- (iii) Shri Rakesh Dogra, the complainant for the charge no. 1 and Shri P. J. Naik; the Investigation Officer who inquired into the charges leveled against the delinquent and who also recorded statements of witnesses, both vital witnesses have not been examined by the first party employer before the tribunal. Had they been produced as a witness IN THE TRIBUNAL, the second party workman would have an opportunity to cross examine them. Thus on-examination of such vital witnesses does not inspire confidence in the *bonafides* of the first party bank.
- (iv) A perusal of the oral evidence of MW No. 1 & 2 establishes the exact reproduction of the averments made in the written statement but during the course of cross examination it revealed that MW-1 and MW-2 have given false statements and therefore, their testimony is liable to be rejected by the Tribunal.
- (v) The first party management has not chosen to produce any fresh material regarding past record of the second party workman during the *de novo* enquiry before this Tribunal.
- (vi) The first party bank had not examined any independent witness like customers who were present in the banking hall at the time of alleged incidents.

34. **The Learned Counsel for the first party management attempted to defend the action taken by the management on the basis of filing written arguments at Exhibit-38 which are reproduced as under:-**

**1. Case of worker concerned:**

- *It is submitted by the bank that, in pursuance to the direction of Hon'ble High Court in LPA, the bank had filed an affidavit at Ex. 29 and 30, of Mr. N. C. Gilder, Deputy General Manager at relevant time and Mr. T. K. Parmar who was working as a cash cum clerk at relevant time. The bank begs to submit that, both witnesses were cross examined by the second party, but during the cross examination of both the witnesses, the second party has failed to prove any allegations leveled against the bank by him. It is submitted by the bank that from the cross examination of the witnesses no enmity or prejudice established, it is submitted that witnesses and second party were from different union and therefore it has no relevancy with the punishment inflicted by the bank therefore, the allegations of prejudice and malafide do not survive.*
- *It is submitted by the bank that after the completion of oral evidence of first party bank, the second party workman Mr. Pandya had filed an affidavit in lieu of his oral evidence on 21.04.2016. The facts narrated in Para 1 to 3 of the said affidavit are based on factual aspect and therefore it is not disputed by the first party bank.*

*The averments made in Para 4 and 5 of the affidavit regarding non examination of independent witnesses and subordinate staff members of the bank, begs to clarify that this averment is misleading. The bank had examined the eye witnesses of the incident only. It is discretion of the management to examine particular witness, no employer can be compelled to examine particular witness, but on the said point bank begs to clarify that the second party could have called these persons as his witness as a defense witness. The subordinate staff with whom he was working; were not examined for the reason best known to him, but ultimately he has decided not to examine any witness before the Hon'ble Tribunal and therefore the said averment does not sustain. The defense of the second party in pursuance to the incident is not believable. It is not true that, for false and frivolous allegations the bank had issued a charge sheet. There was no reason for the bank to do so.*

The bank further begs to submit that Mr. T K Parmar and Mr. N C Gilder were working in officer grade, when Mr. Pandya had taken charge in the Naroda branch. He has not proved any enmity or any incident with both the officers and therefore, averments to that effect do not sustain.

- In pursuance to Para 6 of the said affidavit the bank begs to submit that the second party had given total 19 names of the employees of the bank (except two) as per his say they were present on that day, but he has not chosen to examine any sub-staff or computer operator whose names are mentioned in the list in his support, in pursuance to the further averments of said Para, the second party had cross examined the witness of the bank but allegations against the bank are not established from the cross examination of the witnesses, on the contrary it is admitted by the second party himself that he had no occasion to talk with him as he was transferred only 15 days before at Naroda branch and therefore, the question does not arise to keep any grudge or prejudice against the second party.
- In pursuance to Para 7 of the said affidavit, the allegations regarding the discrimination does not survive, even Mr. Raol is not issued a charge sheet. It is a discretion of the bank and therefore, the second party does not confer any right to get equal treatment, even one fellow is not given any punishment, from this averment also the malafide action or prejudice are not proved. In pursuance to the averments of judgment of Hon'ble Criminal Court acquitting the second party the bank begs to clarify that it is not relevant to the incident committed or order passed by the disciplinary authority of the bank in pursuance to, because criminal court and disciplinary authority of any institution are quite different and the acquittal by criminal court will not affect the order of disciplinary authority. On the said point, the first party bank craves to rely upon judgment of Hon'ble Supreme Court reported in 2012(1) LLJ Pg. 320 in the case of Divisional Controller JSRTC vs. M G Vittal Rao. The copy of the said judgment is marked and annexed as Annexure-A.

In the said case, the Hon'ble Supreme Court has held that the nature and scope of both are different – an order of acquittal cannot conclude and affect the departmental proceedings. Relevant Para 19 & 24 on Pg. 327 & 328. The disciplinary authority of public institution has to maintain discipline of institution. The Bank begs to rely on the point of relevancy judgment of Criminal Court acquitting the employees and punishment imposed by the disciplinary authority of institution.

It is submitted by the bank that the disciplinary authority of public institution has to maintain discipline of institution and therefore such behavior of any employee of public institution like a bank adversely affect the prestige of the institution which cannot be tolerated. If leniency is shown, that will adversely affect to the other employees of the institution.

- In pursuance to the averments made in Para 8 of the said affidavit, it is not disputed that the second party had also challenged one order passed by the bank on 04.05.1991 against the second party, but the bank begs to submit that for no reason, it is challenged after lapse of 11 years.
- In pursuance to the Para 9 of the affidavit, the bank begs to clarify that, if gross misconduct committed by any employees of public institution then the clean past record will not dilute the gravity of misconduct.
- The averments of Para 10 of affidavit regarding the rivalry or non-cordial relation with the two unions are not proved. It is clarified that, the averment is not at all related with misconduct committed by Second party as he was only a member of staff union and membership of the officers of the Union is nothing to do with.
- The second party had made serious allegations of victimization in Para 11 of the affidavit which are false, got up and far from truth, which are only made with a view to support the case of second party. The bank begs to clarify that, the allegations of victimization are serious allegation and therefore it required to plead and prove specifically.

The first party bank craves to rely upon the judgment of the Hon'ble Supreme Court in the case of M/s. Bharat Iron Works vs. Bhagubhai B Patel and ors. Reported in 1976, SCC L&S) Pg. 92. The copy of the said judgment is marked as Annexure- B. relevant Para – 11, 12 & 20.

In the present case, the second party has not pleaded in detail nor is it proved by authentic evidence as it is directed by the Hon'ble Supreme Court cited above. In the said Para the second party had misinterpreted the provisions of bipartite settlement.

- The second party had averted the point of his employment after his termination and for not getting remuneration. The bank begs to clarify that, the second party had suppressed the facts on point of his earning. He had not filed an authentic submission along with the substantial supporting documents on this point that except pension he is not having any earning. On this point the bank further begs to point that the point of earning for intervening period – back wages – gainful employment is required to be proved by substantial credible evidence. On this point the first party bank craves to rely on judgment of Hon'ble Gujarat High Court

*in the case of Prabhakar Trimbak Vidwans and Stovek Industries Ltd. Reported in 2011 (53) GLR, Volume 52(3) Pg. 2310, Relevant para-9, 12 & 16. The copy of the said judgments is annexed and marked as Annexure – C. On the said point the First party bank also relies upon the judgment of Hon'ble Gujarat High Court in the case of GEB Vs. N K Sindhav reported in 2015 II GLR, Pg. 1833 Relevant Para-7 on Page 1836. The copy of the said judgments is marked and annexed as Annexure – D.*

*The bank begs to submit that as it is held by Hon'ble Gujarat High Court in the said case, that, the worker concerned has to say what effort he has made to get employment, he will not be entitled for back wages for intervening period – as the second party had not proved the said point by leading credible evidence, the same could not be taken into consideration and relief prayed is not required to be granted.*

*The first party bank furthermore relies upon the judgment of Hon'ble Supreme Court reported in 2015, LLR Pg.1 in the case of Collector Singh Vs. LML Ltd. The copy of the said judgments is annexed and marked as Annexure-E. In the said case the Hon'ble Supreme Court was dealing with the point of disproportionate punishment and entitlement of compensation in lieu of reinstatement. It was held by the Hon'ble Supreme Court that, "two decades have already been passed – workman must have been gainfully employed elsewhere– workman is near superannuation–lump sum compensation of Rs.5,00,000 meet the ends of justice." The Hon'ble Supreme Court has also held that, long duration of 20 years between date of termination and date of final decision – presumption is justified that the worker must have been gainfully employed elsewhere. Relevant para 15 and 16 on Pg. 4.*

*In the present case also the termination order of year 2002, challenged in the 2005 and litigation is still going on after a lapse of 11 years. The second party is also likely to be retiring in the year 2018-19 therefore, ratio of said judgment is applicable to the present case.*

*It is submitted by the bank that, the second party is at the verge of his retirement as he has deposed that he had attained the age of 58 years in 21.04.2016, as per the rules and regulations of retirement applicable to him, he will be superannuated in the year 2018 and therefore also the case of the second party is not worth granted for reinstatement. The first party bank begs to submit that, the second party will not be entitled to any amount of back wages till the date of his actual reinstatement as he has not proved the point of intervening earning. It is submitted by the bank that the Hon'ble Gujarat High Court has held in the case of GEB Vs. NK Sindhav (citation is already annexure-D) that, the dispute was raised after 2 years of his termination and therefore the concerned workman was not entitled to any amount of back wages for the period.*

*In the present case, also the second party has challenged his termination dated 10.11.2002, in the year 2005 i.e. after 3 years and therefore also it will not be entitled to any amount for this period.*

- *In pursuance to the averments made in Para 13 of the affidavit, the bank begs to submit that on 21.04.2016 along with the affidavit of second party he had submitted 9 documents which were endorsed for 'exhibition – subject to contention' by the first party's representative. It is submitted by the bank that, all the documents pertains to the incident/misconduct committed by the second party but from the said documents the allegations and averments made by the second party in that pursuance are not proved.*

## **2. Case of the bank :**

- *The facts are not disputed between the parties as mentioned in Para 1 of our arguments. It is not disputed that in pursuance to the incident the bank had issued a charge sheet and after conducting departmental inquiry, the order of compulsory retirement was passed on 11.11.2002, which was challenged by the second party in 2005 as reference CGITA No.45/2005.*
- *It is submitted by the bank that in pursuance to the direction of Hon'ble Gujarat High Court in LPA dated 22.06.2015, the first party had lead the evidence vide Ex.29 and 30, but from the cross examination of the said witnesses are not established the case of second party that, the allegations were not proved and bank had issued him false and frivolous charge sheet.*

## **3. Law Point :**

- *The first party bank begs to submit that the bank had issued an order dated 10.11.2002 of compulsory retirement. In this pursuance the Hon'ble Supreme Court in the case of Allahabad Bank officers Association and Anr. And Allahabad Bank and Ors., reported in 1996 I LLJ, Pg. 519. The copy of the said judgments is annexed and marked as Annexure-F. The Hon'ble Supreme Court has held that 'compulsory retirement differs from both, dismissal and removals as it involves no penal consequences – it differs from dismissal and removal both in its nature and effect – it is not considered prima facie and per say a punishment and does not*

attract the provisions of article 311 – it is neither a punishment nor a stigma'. Relevant contention on Page 519 as II & III Relevant Para 17 and 19 on Pg. 524 and 525.

The first party bank craves to rely upon one more judgment of Hon'ble Punjab and Haryana High Court in the case of Surinderpal Singh Vs. Central Government Industrial Tribunal cum Labour Court and Ors. Reported as short note in 2015 LLR, Pg.1222. The copy of the said judgments is annexed and marked as Annexure-G. In this case, the Hon'ble P&H High Court has held that, 'the petitioner was inflicted punishment of compulsory retirement and the workman has raised an industrial dispute challenging his dismissal order.' It is held by the Hon'ble Court that, if the workman had not made any effort to disbelieve the evidence brought on record by the management, the allegations leveled against the workman would stand proved on the basis of testimony of customers.

The identical case is that, in the said case also the parties were granted opportunity to lead evidence to prove their stand. It was held by the Hon'ble High Court the workman has not made any effort to disbelieve the evidence brought on record by the management, the allegation leveled against the workman would stand proved on the basis of testimony of customers.

It is submitted by the bank that, the first party bank had examined two witnesses in pursuance to the misconduct committed by the second party but; the second party had not examined any defense witness to prove his innocence before the Hon'ble Tribunal. The Hon'ble P&H High court was pleased to dismiss the appeal of the worker concerned on the said ground. It was also held that the misconduct of the workman has been proved to the testimony of the customers hence no fault can be found with the findings rendered by the Labour Court in respect of compulsory retirement with superannuation benefit.

In the present case also second party was awarded the punishment of compulsory retirement. He was paid all the legal dues including gratuity by the bank which he is enjoying till today.

#### **4. Propriety of punishment:**

- The bank on the said point craves to rely upon the judgment of Hon'ble Gujarat High Court in the case of DCGSRTC Palanpur vs. Pathan Idrishmiya Bikhumiya and Ors. Reported in 2015 LLR, Pg.39. The copy of the said judgments is annexed and marked as Annexure-H. Relevant Para-3, 6, 7 & 8 on Page No.40 & 41. The Hon'ble Gujarat High Court has held that the exercise of power vested under Section 11A of the industrial Disputes Act, 1947 by the Labour Court/ Industrial Tribunal by taking a lenient or sympathetic view towards a person/workman committing serious misconduct is not appropriate and thereafter the Hon'ble Gujarat High Court was pleased to pass an order allowing the petition filed by the petitioner.

In the present case also the misconduct committed by the second party was of grave nature and therefore, it does not deserve any sympathetic view or leniency from the Hon'ble court.

- The first party bank also begs to rely upon the judgment of Hon'ble Supreme Court reported in (2013) 2 Supreme Court cases (L&S) Pg.893, in the case of SR Tewari Vs. Union of India. The copy of the said judgments is annexed and marked as Annexure-I. The Hon'ble Supreme Court has held that 'while examining issue of proportionality, court can consider circumstances under which misconduct was committed and consider the effect if order of punishment imposed by disciplinary authority is set aside or substituted by some other penalty'. In the present case, if the Hon'ble Tribunal set aside the order of punishment of compulsory retirement awarded to the second party, it will adversely affect the discipline and administration of the first party bank which is a public institution.
- It is submitted by the bank that the second party had committed grave misconduct of leaving work without permission and threatening to kill the higher officer. As per the submission of the first party bank the incident is proved before the Hon'ble Tribunal vide Ex.29 and 30. The witnesses of the bank who were examined in pursuance to the incident and therefore in connection of proved misconduct the bank craves to rely upon the judgment of Hon'ble Gujarat High Court which is reported in 2015 I LLR Pg.518. Relevant Para-14 to 16 on pages 520-521 in the case of Divisional Controller GSRTC Vs. Sahdevsing Jedhubha Jadeja. The copy of the said judgments is annexed and marked as Annexure-J. The Hon'ble Gujarat High Court has dealt with the misconduct of misbehavior in the judgment. On the said point, the first party bank craves to rely on one more judgment of Hon'ble Supreme Court reported in Vol.140, FLR, 2015 Pg.757. Relevant portion on page-757 as 'misconduct' Para-6 & 'Punishment – Para-8 on page-759 & 760. The copy of the said judgments is annexed and marked as Annexure-K. In this also the Hon'ble Supreme Court has held that the misconduct of misbehavior and misconduct of leaving work without permission are of grave nature and no sympathetic attitude should be shown for this.

5. It is submitted by the bank that considering the arguments in the proof of misconduct, committed by the second party it is clearly established that the same was of grave nature which can be considered as 'gross

*misconduct'. The first party bank has also averted regarding the punishment and considering that also it established that, the punishment imposed to the second party is quite legal, proper and proportionate and therefore the second party is not entitled to any relief claimed by him. The bank begs to submit that the second party is not entitled to any amount for intervening period and that relief is also not worth to be granted.*

*The bank begs to submit that the Hon'ble Tribunal is requested to pass necessary order in the interest of justice rejecting the dispute raised by the second party as the same is not legally maintainable and deserves to be rejected."*

**It is noteworthy The learned advocate of the first party had forgotten while arguing that the charge sheet is issued by the first party employer against the second party workman and therefore, burden of prove the allegations is on the first party employer and not on second party workman as understood by the learned advocate.**

**The learned advocate of the first party had argued vehemently that it is a discretion of the bank and therefore, the second party does not confer any right to get equal treatment, even one fellow is not given any punishment, this argument is fallacious. Such statement of the learned advocate of the first party if seriously considered then it is admitted facts of Unfair Labour Practices on the part of the first party employer.**

**Whatever arguments tendered by the first party; are irrelevant as this is a case of no evidence.**

35. The crux of the matter into the matter of reference has been narrowed down on the basis of the evidences management witness. During their cross examination; both the witnesses stated that Ashok M. Pandya (delinquent workman) has not abused and/or assaulted Shri Rakesh Dogra or any other bank official. They have also admitted generally Ashok M. Pandya (delinquent workman) is a gentleman and he had not ever abused or assaulted any bank official / customer.

36. The questioned conduct is the only incident which was allegedly committed by Ashok M. Pandya, wherein Shri Rakesh Dogra lodged the FIR in the Naroda Police Station. Findings of facts recorded in the order of acquittal by the Metropolitan Magistrate that the statements of the prosecution witnesses recorded by the police and before the court are contradictory, witnesses clearly stated that police had not come to the bank while the Investigation Officer reiterated that he had recorded the statements of witnesses in the bank. Police has not drawn panchnama of the place of incident. Therefore, evidently, it appears that this is a case of criminal conspiracy amongst the branch officers for keeping away the second party workman Ashok M. Pandya away from union activities.

37. It is true that criminal proceedings and departmental proceedings may go together and criminal proceeding is no bar to the departmental proceedings. But in the instant case provisions of clause 19.4 of the Bipartite Settlement came across the way being the mandatory binding provision. **It is noteworthy that** despite the fact that criminal proceedings u/s 506(1), 294(b) and 114 of the IPC ended in acquittal of the second party workman; the Enquiry Officer, Disciplinary Authority and Appellate Authority ignored this fact and also the binding provision of Para 505 of the Sastry Award, clause 19.4 of the Bipartite Settlement dated 19.10.1966 and by shaking hands with each other officers and thereby acted contrary to the rules, regulations governing the service conditions between the parties and thereby the first party had indulged in to the act of Unfair Labour Practices as defined in the Schedule 5<sup>th</sup> of the Industrial Disputes Act, 1947 and made themselves liable to be prosecuted u/s 29 of the ID Act, 1947.

Lastly, the crux of the dispute, as admitted by the witnesses of the first party in their cross- examination, is that the Ashok M Pandya used the following words to Rakesh M Dogra which are reproduced as under:

*"मैनेजर उनके मन में क्या समझते हैं वो अपनी नौकरी तो करते नहीं हैं, हम मैनेजर के गुलाम नहीं हैं. मैंने दो मैनेजरों को मारा है. मैनेजर मेरे खिलाफ कार्यवाही करेंगे तो बैंक का काम ठप्प करा दूँगा."*

(Statement of Nalinkant Chandrakant Gilder)*This is true that despite aforesaid threat; Ashok M. Pandya did not attempt to stop the working of Bank.* (Statement of Nalinkant Chandrakant Gilder)."

**XX by Court.**

*I was busy in my official work. डोगरा कह रहा था की तमीज़ से पेश आओ. उस समय पण्ड्याजी डोगरा को जबरदस्ती बिठाल रहे थे. मारा नहीं था. कोई गाली भी नहीं दी थी, किसी प्रकार की. डोगरा को कोई चोट भी नहीं आई थी. पण्ड्याजी ने कहा था कि इस जगह से चले जाओ वरना तेरा पता भी नहीं चलेगा.*

*पण्ड्याजी को मैं ब्रांच में कार्य करने से ही जानता हूँ. पण्ड्या जी कभी भी ब्रांच में या अन्य कहीं मेरे सामने किसी से बदतमीज़ी नहीं की।*

**आमतौर पर पण्ड्याजी एक शरीफ कर्मचारी थे। मैंने डोगरा से पण्ड्याजी द्वारा किये गए व्यवहार की कोई जानने या जांच करने की कोशिश नहीं की।**

**डोगरा थाने रिपोर्ट करने किस के कहने पर गया नहीं मालूम।**

*XX by Pandya.*

**पण्ड्याजी के काउंटर के बाईसाइड मे H. C. Hingol बैठते थे। उसके साइड मे J. K. Solanki बैठता था। पण्ड्याजी के दाईं साइड मे केश काउंटर पर R. A. Khakhi बैठता था। मुझे पता नहीं की पण्ड्या के अलावा M. R. Raol भी क्रिमिनल केस में अभियुक्त था।**

**मैंने open Court मे Raol को नहीं पहचाना था और न देखा था।**

*I do not know as to why Bank Management took action against Pandya only while Police submitted charge sheet against Raol besides Pandya.*

*It is wrong to say I conspired with Dogra & Branch Manager to implicate Pandya in criminal case as well as in departmental proceedings.*

*To Court.*

*If my senior stops me to argue and ask in loud manner to sit down; it will not be treated as misconduct.*”(Statement of Tansukhlal Kantilal Parmar given in Cross- examination).

From the aforesaid examination it appears that it was simply a incident of heated exchange of words between workman second party Ashok M Pandya and Rakesh M Dogra because Rakesh M Dogra did not prefer to depose before the Tribunal and Nalinkant Chandrakant Gilder has not specifically explained the abuse and threat given by workman second party Ashok M Pandya.

Here to prove the charges of misconduct, I think necessary to reproduce the provisions of sections 107, 114, 294 and 506 IPC in which the FIR was registered in the police station”

**Section 107: Abetment of a thing -** A person abets the doing of a thing, who –

First – Instigates any person to do that thing; or

Secondly – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.

**Explanation 1 –** A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

**Illustration**

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, willfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets, by instigation the apprehension of C.

**Explanation 2 –** Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

**Abettor present when offence is committed -** Whenever any person, who if absent would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

**Obscene acts and song –** Whoever, to the annoyance of others –

(a) Does any obscene act in any public place, or

(b) Sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

**Punishment for criminal intimidation** – Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**If threat be to cause death or grievous hurt, etc.** – and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

*Though the statements of both the witnesses of first party do not inspire confidence but even if it assumed that the said statement is true, then all the aforesaid provisions of Indian Penal Code make it clear the words used by workman second party Ashok M Pandya do not make out offence under the aforesaid provisions. At the most the conduct of workman second party Ashok M Pandya makes it a case of heated exchange of words between Rakesh M Dogra and Ashok M Pandya. Both are union leaders.*

In C.V. Kotecha vs Halar Salt and Chemicals Ltd, Spl. Civil Application No.1642 of 1979 decided on 11.12.1984, Hon'ble Gujrat High Court referring Ved Prakash Gupta M/S Delon Cable India P. Ltd, AIR 1984 sc 914 held that order of extreme penalty of dismissal is grossly inappropriate.

The ratio of the aforesaid judgements is reported as under:

“3. At the outset the learned Counsel for the petitioner workman referred to the judgement in the case of Ved Prakash Gupta M/S Delon Cable India P. Ltd, AIR 1984 SC 914 and particularly the observance at page 918 in Para 6 and submitted that under any circumstances the order of punishment of dismissal was absolutely illegal and was required to be quashed and set aside and if the court upheld his contention.

4. The facts of the present case shows that the workman was the active trade union leader and Vice President of Jamnagar Mazdoor Sangh. The alleged rude behavior and uttering abuses was caused by the injury received by his brother in an accident in the factory. While his brother was removed to the hospital, none from the management had attended to injured workman in the hospital, therefore, the petitioner telephoned in the office and it alleged that during the telephonic talk he had behaved rudely with the manager Chunnilal. Thereafter when manager Chunnilal went to the hospital there also, it is alleged, that this workman had uttered abuses to Chunnilal and conducted him rudely in the presence of officers and other persons of the Company. This was considered by the management to be subversive of discipline and serious misconduct requiring extreme penalty of dismissal.

6. It is impossible to uphold the reasoning of the Labor Court. The Supreme Court in the above case has clearly declared the law on the subject. In a case of very similar conduct of abuses and use filthy language against the persons in management, the Supreme Court has held that the extreme penalty of dismissal would be grossly disproportionate and would clearly show malafide and victimization of the workman. In the present case also the workman is not only active union workman but also Vice President of the Jamnagar Mazdoor Sangh. The observations of the Supreme Court are clear and simple and they are as follows:

“There is nothing on record to show that any previous adverse remark against the applicant had been taken into consideration by the management for awarding the extreme penalty of dismissal from service to the appellant even if he had in fact abused in filthy language Durg Singh and S.K. Bagga. We are therefore of the opinion that the punishment awarded to the appellant is shockingly disproportionate regarding being had to the charge framed against him. We are also of the opinion that no responsible employer would ever impose in like circumstances the punishment of dismissal to the employee and that victimization or unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy charge of abuse of some worker or officer of the management by the appellant within the premises of the factory. We, therefore, hold that the termination of the appellant's service is invalid and unsustainable in law, and that he is entitled to reinstatement with full back wages and other benefits including continuity of service.”

The departmental proceedings are more or less similar to criminal proceedings, therefore the principles of criminal trial also applies in the departmental proceedings. Thus in short I would like to summarize the grounds on which the order of first party management cannot be sustained:

- (1) First, the first party management has not examined the Rakesh M Dogra, the main and only complainant on which complaint the second party was charge-sheeted and was put on trial of departmental proceedings.

- (2) Second, the first party management has examined only two witnesses in this reference. The testimony of first witness Nalinkant Chandrakant does not inspire confidence and second witness Tansukhlal Kantilal Parmar deposed on the basis of here say evidence. Further he has also not supported the first party case in his cross-examination. Even if their evidence is, for the sake of argument, is believed to be true then such evidence nowhere make out a prima facie case of sections 114/294/506 IPC or any other misconduct covered under service conduct rules.
- (3) Third, the departmental proceedings were conducted in haste manner violating the spirit of Shastry award and Bipartite Agreements which bars the departmental proceeding for a year in case where the delinquent has been subjected to the criminal trial by lodging FIR in a police station.
- (4) Third, as appears at the most it was a case of heated exchange between two officials of bank for which the award of major penalty awarded in the light of the judgement in of Ved Prakash Gupta M/S Delon Cable India P. Ltd, AIR 1984 SC 914 and In C.V..Kotecha vs Halar Salt and Chemicals Ltd, Spl. Civil Application No.1642 of 1979 decided on 11.12.1984 by Hon'ble Gujarat High Court, is excessive and suffers with malafide as it was clearly established that both the first party witnesses and second party workman were the active office bearers of their respective trade unions.
- (5) Fifth, It was a violation of all the Bipartite Agreements because the second party workman was also acquitted by the Court of Magistrate in the criminal trial into the same incident, even then thereafter he was charge sheeted and was also subjected to departmental proceedings and punished on whimsical grounds.

Thus on the aforesaid grounds the issue no.1 is decided in negative and I hold that the charges leveled against the second party workman Ashok M. Pandya are not proved and the Issue No. 1 is answered in the negative as against the first party management and in favour of the second party workman Ashok M. Pandya. In view of my findings on Issue No. 1, the punishment of removal of services of Shri Ashok M. Pandya, Ex- Computer Operator, Naroda branch, Ahmedabad by way of 'Compulsory Retirement' cannot be sustained in the eye of law and is not legal, proper and justified

40. **Issue No: 1:** Thus in the light of the aforesaid discussions first party management failed to prove the charge No.2 leveled against the second party workman Shri Ashok M. Pandya vide charge sheet no. AZO/TB/DA/856/137 Dated 30.05.2002 before this Tribunal despite affording an opportunity to prove the charges leveled by producing fresh materials and evidence before this Tribunal. Accordingly, the charges leveled against the second party workman Ashok M. Pandya are not proved and the Issue No. 1 is answered in the negative as against the first party management and in favour of the second party workman Ashok M. Pandya. In view of my findings on Issue No. 1, the punishment of removal of services of Ashok M. Pandya, Ex- Computer Operator, Naroda branch, Ahmedabad by way of 'Compulsory Retirement' cannot be sustained in the eye of law and is not legal, proper and justified.

41. **Issue No: 2**

In the light of the findings arrived at Issue No. 1; I declare the whole enquiry proceeding conducted by the first party management is sham and it is a case of harassment, victimization, discrimination, unfair labour practices and economic encounter of the second party workman. It is a case of teaching a lesson at the cost of public exchequer to the second party workman by the first party employer as well as other officials of the Naroda branch so that the hegemony of the branch management may go on smoothly. To avoid such repetitions resulting into loss of public exchequer and to nab such kind of attitude and tendency amongst the first party management across the country I pass the following award in view of the discussions made hereinabove:-

- “(i) Present reference is allowed, the punishment order No. AZO:TB:DA:856:599 dated 11.11.2002 issued by the Disciplinary Authority of the first party employer in pursuant to the charge sheet No. AZO:TB:DA:856:137 dated 30.05.2002 is hereby quashed and set aside;
- (ii) The second party workman Ashok M. Pandya be reinstated to his original post with all consequential service benefits with continuity of service. Further if any employee junior to him is promoted during this period by the first party employer. Same benefit shall also be given to second party workman Ashok M. Pandya which may accrue to him by virtue of his employment with the first party bank. Aforesaid action shall be passed by first party within a period of 60 days from the publication of this Award.
- (iii) It is further directed to pay full wages for the intervening period i.e. from 11.11.2002 till the date of reinstatement by the first party Bank.
- (iv) The amount of back wages paid to the second party shall be recovered by the bank equally from (1) Shri Rakesh Dogra, (2) Shri Nalinkant Chandrakant Gilder, (3) Shri Tansukhlal Kantilal Parmar,



all witnesses and(4) Shri A. M. Makim – Enquiry Officer, (5) Shri T. Balasubramanian – Disciplinary Authority and(6) Shri D. J. Chattopadhyay – Appellate Authority, all erring officials for deliberate misconduct on their part.

42. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1777.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 81/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-22011/48/2008-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1777.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 19.08.2016.

[No. L-22011/48/2008-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

##### Present:

Shri B.C. Rath,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

#### INDUSTRIAL DISPUTE CASE NO. 81/2008

L-22011/48/2008-IR(CM-II), dated 04.11.2008

**Date of Passing Order – 29<sup>th</sup> July, 2016**

##### Between :

The General Manager, Food Corporation of  
India, Regional Office, Khadya Bhawan,  
Vani Vihar, Bhubaneswar – 751 007, Orissa

...1<sup>st</sup> Party-Management

(And)

The Joint Secretary, Food Corporation of  
India Workers Union, 58/1, Diamond  
Harbour Road, Kolkatta – 700 023

...2<sup>nd</sup> Party-Union.

##### Appearances :

Shri N.K. Nayak, Manager (IR) ... For the 1<sup>st</sup> Party-Management

Shri B. Mohapatra, Vice President ... For the 2<sup>nd</sup> Party-Union.

#### ORDER

Authorized representatives for both the parties are present. Perusal of the case record reveals that the 2<sup>nd</sup> party-Union has filed its statement of claim on 06.04.2010, whereas the 1<sup>st</sup> Party-Management on being noticed filed its written statement on 31.08.2010. When the case was fixed for settlement of issues and for adducing evidence by the parties the 2<sup>nd</sup> party-Union in spite of adducing any evidence has filed a memo that they are not interested to proceed with the case and as such prayed to pass a no-dispute order. The representative of the 1<sup>st</sup> Party-Management has raised

no objection on the memo of the 2<sup>nd</sup> party-Union. As the 2<sup>nd</sup> party-Union is not interested to prosecute its dispute there is no alternative than to pass a no-dispute order and accordingly a no-dispute order is passed in the case.

2. Accordingly the reference is answered in the above terms.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1778.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 39/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-22012/229/2005-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1778.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited and their workmen, received by the Central Government on 19.08.2016.

[No. L-22012/229/2005-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

**PRESENT:** Sri Pramod Kumar Mishra, Presiding Officer

**REFERENCE NO. 39 OF 2006**

#### PARTIES :

The management of Ningah Colliery of M/s. E.C.L.

**Vs.**

Md. Nasiruddin Mian

#### REPRESENTATIVES:

For the management : Sri P. K. Goswami, Learned Advocate

For the union (Workman) : Sri Rakesh Kumar, President, KMC

Industry : Coal

State : West Bengal

Dated : 28.07.2016

#### AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/229/2005-IR(CM-II) dated 02.08.2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

#### SCHEDULE

“Whether the demand of the KMC from the management of Eastern Coalfields Limited Coalfields Limited to provide employment to Md. Nasiruddin, son of Late Md. Kabir, workman is legal and justified? If so, to what relief is the said Md. Nasiruddin entitled?”

1. Having received the Order NO. L-22012/229/2005-IR(CM-II) dated 02.08.2006 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 39 of 2006

was registered on 14.08.2006. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The union representative has filed written statement on behalf of claimant Md. Nasiruddin Mian. He has stated, in brief, in his written statement that Md. Kabir, Ex-Fitter of Ningah Colliery of M/s. Eastern Coalfields Limited bearing U.M. No.- 256512 was a permanent employee of the company. Late Md. Kabir expired on 11.12.1993, while he was in service of the company. As per provision of Wage Agreement / N.C.W.A. his one dependent son is entitled to get the employment. Md. Nasiruddin Mian son of Late Md. Kabir applied for providing employment and submitted all required documents in support of his claim. The employment proposal was processed and after proper scrutiny at colliery level and area level proposal of employment was recommended. But all of sudden some one made a complaint about the genuineness of relationship with motive, to harass the applicant. Being aggrieved Md. Nasiruddin Mian, the dependent son of Late Md. Kabir filed writ before hon'ble High Court. Hon'ble High Court pronounced the declaration that Md. Nasiruddin Mian is the son of Md. Kabir. Md. Nasiruddin Mian again claimed for providing employment after receiving copy of the judgment. But till date no action has been taken. He is still waiting for employment. Md. Nasiruddin Mian along with his family is now at the stage of starvation because after death of his father there is no any other earning member in the family. As per N.C.W.A. management should provide employment to one dependent but management of M/s. Eastern Coalfields Limited is violating the guideline of N.C.W.A. The wife of Late Md. Kabir should be paid monetary compensation till her son Md. Nasiruddin Mian gets employment. But she is not paid monetary compensation also. The management of M/s. Eastern Coalfields Limited is deliberately delaying the matter by not providing employment to Md. Nasiruddin Mian. The union has prayed that Md. Nasiruddin Mian son of Md. Kabir, Ex-Fitter of Ningah Colliery of M/s. Eastern Coalfields Limited should be provided employment and till then wife of Late Md. Kabir should be paid monetary compensation.

3. The Ningah Colliery of M/s. Eastern Coalfields Limited did not file written statement. The present reference being Reference No. 39 of 2006 was registered on 14.08.2006. Accordingly notices were issued to both the parties. Sri P. K. Goswami, learned advocate appeared on behalf of Ningah Colliery of M/s. Eastern Coalfields Limited on 21.05.2007 and filed his authorization on behalf of Ningah Colliery of M/s. Eastern Coalfields Limited. More than 30 dates were fixed for filing written statement by Ningah Colliery of M/s. Eastern Coalfields Limited. But Ningah Colliery of M/s. Eastern Coalfields Limited did not care to file written statement. Ultimately the learned predecessor of this tribunal passed the order on 09.1.2013 debarring management to file their written statement.

4. The union has filed following documentary evidences :

(i) Xerox copy of the Identity Card of Late Md. Kabir, Ex-workman, (ii) Xerox copy of the Service Excerpts format of Late Md. Kabir in which name of Md. Nasiruddin Mian mentioned as son, (iii) Xerox copy of the Death Registration certificate of Late Md. Kabir, (iv) Xerox copy of the Voter Identity Card of Md. Nasiruddin Mian son of Late Md. Kabir, (v) T.C. issued from the school in respect of Md. Nasiruddin Mian son of Late Md. Kabir, Ex-workman of Ningah Colliery of M/s. Eastern Coalfields Limited, (vi) Relationship certificate issued by the M.L.A. of Jamuria, West Bengal, (vii) Xerox copy of the Ration Card issued in the name of Md. Nasiruddin Mian in which father name written as Md. Kabir, (viii) Identity Card issued by the Employment Officer of West Bengal, (ix) Xerox copy of the application addressed to General Manager of Sripur Area of M/s. Eastern Coalfields Limited along with copy of he judgment of the hon'ble Court in which hon'ble Court declared that Md. Nasiruddin Mian is the son of Late Md. Kabir. Md. Nasiruddin Mian claimed for employment but management not provided employment till date, (x) Xerox copy of the provision of he Wage Agreement / N.C.W.A. in which provision mention that in the even to death of employee one dependent is entitled to get the employment. (xi) Xerox copy of the legal opinion given by the advocate to Sr. Manager (P) Ningah Colliery of M/s. Eastern Coalfields Limited in favour of the dependent.

The applicant Md. Nasiruddin Mian has filed affidavit. He has been cross-examined by the learned advocate of Ningah Colliery of M/s. Eastern Coalfields Limited.

Ningah Colliery of M/s. Eastern Coalfields Limited has neither filed any documentary evidence nor examined any witness in his support.

5. I have heard the argument of Sri Rakesh Kumar, learned union representative on behalf of the workman and Sri P. K. Goswami, learned advocate on behalf Ningah Colliery of M/s. Eastern Coalfields Limited.

6. Sri Rakesh Kumar learned union representative has argued that Md. Nasiruddin Mian is son of Md. Kabir. The hon'ble Court has declared that Md. Nasiruddin Mian is the son of Late Md. Kabir. Late Md. Kabir expired during employment of Ningah Colliery of M/s. Eastern Coalfields Limited. At the time of death of Late Md. Kabir the age of Md. Nasiruddin Mian was more than 18 years. As per N.C.W.A. Md. Nasiruddin Mian is entitled for employment in

M/s. Eastern Coalfields Limited, but M/s. Eastern Coalfields Limited is not following rather violating N.C.W.A. The union representative has also filed written argument.

On other hand Sri P. K. Goswami, learned advocate on behalf Ningah Colliery of M/s. Eastern Coalfields Limited has argued that the applicant should seek relief of employment from Civil Court.

7. It is undisputed that Late Md. Kabir was a permanent employee at Ningah Colliery of M/s. Eastern Coalfields Limited bearing U.M. No.- 256512. It is also undisputed that he expired on 11.12.1993 while he was in employment of Ningah Colliery of M/s. Eastern Coalfields Limited. The death certificate of Late Md. Kabir has been filed by concerned union. As per death certificate of Late Md. Kabir his age was recorded as 58 years on the date of his death. The dispute whether Md. Nasiruddin Mian is son of Late Md. Kabir, has been resolved by hon'ble Court. Hon'ble Court has held that the plaintiff (Md. Nasiruddin Mian) is entitled to a degree for declaration that he is son of Late Md. Kabir. There is no dispute regarding the age of claimant at the time of applying for employment after the death of Late Md. Kabir.

8. In chapter social security of N.C.W.A.-V the dependent son or legally adopted son is entitled for employment after the death of the concerned employee. This is bipartite agreement between various union representatives and various management representatives. The bipartite agreement is settlement under section 18 of Industrial Dispute Act, 1947 and shall be binding on the parties to the agreement. The term 'settlement' has been defied under section 2 (p) of the Industrial Dispute Act, 1947 as under :

*“ ‘settlement’ means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to [an officer authorized in this behalf by] the appropriate Government and the conciliation officer.”*

9. Hon'ble Supreme Court in Sushma Gosain and others v/s Union of India and others, 1989 (59) FLR page 626 has held;

*“ We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is not suitable post for appointment supernumerary post should be created to accommodate the applicant. ”*

10. The applicant Md. Nasiruddin Mian has stated in Para - 9, 10, 11, 12 and 13 of his affidavit that the hon'ble Court has declared him as the son of Late Md. Kabir. Other family members including his mother have no objection for getting employment in place of his father as per provision of N.C.W.A. He has no source of income after the death of his father. He along with his other family members are at the stage of starvation. To maintain livelihood he is in urgent need of employment. His is eligible for employment as per N.C.W.A. He also requested the management that if there was any hurdle in providing employment to him then his mother could be provided employment. But management kept silence on this issue.

11. The dispute has been referred under section (2A) of section 10 of Industrial Dispute Act, 1947. Under Industrial Dispute Act only the Tribunal / Forum, mentioned therein have jurisdiction to decide the reference. The argument of Sri P. K. Goswami has no force.

12. In view of discussion above, the demand of Koyala Mazdoor Congress, from the management of M/s. Eastern Coalfields Limited, to provide employment to Md. Nasiruddin Mian son of Late Md. Kabir, workman is legal and justified. Md. Nasiruddin Mian is entitled for employment in M/s. Eastern Coalfields Limited.

### ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1779.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 19/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-22012/138/2003-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1779.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of M/s. Eastern Coalfields Limited and their workmen, received by the Central Government on 19.08.2016.

[No. L-22012/138/2003-IR (CM-II)]

RAJENDER SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

**PRESENT:** Sri Pramod Kumar Mishra, Presiding Officer

**REFERENCE NO. 19 OF 2004**

#### PARTIES :

The management of Parascole Colliery, Kajora Area of M/s. E.C.L.

**Vs.**

Sh. Ram Singh

#### REPRESENTATIVES:

For the management : Sri P. K. Das, Learned. Advocate

For the union (Workman) : Sri Rakesh Kumar, President, KMC

Industry : Coal

State : West Bengal

Dated : 03.08.2016

#### AWARD

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter NO. L-22012/138/2003-IR(CM-II) dated 25.02.2004 has been pleased to refer the following dispute for adjudication by this Tribunal.

#### SCHEDULE

“Whether the action of the management of Parascole Colliery under Kajora Area of M/s. Eastern Coalfields Limited in not allowing Sri Ram Singh, Security Guard to appear before the Apex Medical Board for age assessment is legal and justified? If not, to what relief Sri Ram Singh is entitled? ”

1. Having received the Order NO. L-22012/138/2003-IR(CM-II) dated 25.02.2004 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 19 of 2004 was registered on 22.03.2004 and accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned directing them to appear in the court on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned.
2. Case called out. Sri Rakesh Kumar, President of the Union appears on behalf of the workman. None appears on behalf of the Management.
3. Sri Rakesh Kumar submits that the case may be closed as the workman is not interested to proceed with the case further and he has written his remarks on the order sheet. The case is also very old – of year 1999. Since the workman does not want to proceed with the case further the Tribunal has no option left but to close it. Hence the case is closed and a ‘No Dispute Award’ is hereby passed accordingly.

**ORDER**

Let an “Award” be and same is passed as no dispute existing. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi, for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1780.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 89/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-22012/146/2006-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1780.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure in the Industrial Dispute between the management of Satgram Area of Eastern Coalfields Limited and their workmen, received by the Central Government on 19.08.2016.

[No. L-22012/146/2006-IR (CM-II)]

RAJENDER SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL**

**PRESENT:** Sri Pramod Kumar Mishra, Presiding Officer

**REFERENCE NO. 89 OF 2006****PARTIES :**

The management of Nimcha (R) Colliery of M/s. E.C.L.

**Vs.**

Sri Meghla Bouri

**REPRESENTATIVES:**

For the management : Sri P. K. Goswami, Ld. Advocate

For the union (Workman) : Sri Rakesh Kumar, President, KMC

Industry : Coal

State : West Bengal

Dated : 09.08.2016

**AWARD**

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter NO. L-22012/146/2006-IR(CM-II) dated 01.11.2006 has been pleased to refer the following dispute for adjudication by this Tribunal.

**SCHEDULE**

“Whether the action of the management of Nimcha Colliery, Satgram Area of M/s. ECL in dismissing Sri Meghla Bouri w.e.f. 14.10.2005 is legal and justified? If not, to what relief is the workman entitled? ”

1. Having received the Order NO. L-22012/146/2006-IR(CM-II) dated 01.11.2006 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. 89 of 2006 was registered on 11.12.2006. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order

notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The workman Sri Meghla Bouri has stated in his written statement in brief that he was a permanent employee of Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited as Under Ground Loader bearing U.M. No. 354240. He was absent from duty from 25.03.2005. He replied to the charges and explained the fact for which he could not attend the duty. He appeared before Enquiry Officer and gave his statement. During enquiry the delinquent workman namely Sri Meghla Bouri stated the reason of absence before the Enquiry Officer. He was under treatment under Satgram Area Hospital from 26.03.2005 to 29.04.2005 and from outside doctor from 30.04.2005. He submitted his sick papers during enquiry. But management decided to dismiss him from service vide letter no. SAT/Pur/Termination/05/4697 dated 7/14.10.2005. Workman and his union requested the management for his reinstatement but his request was not considered. Punishment of dismissal is very harsh and disproportionate to the nature of offence. The job of Under Ground Loader is very hard and hazardous job. A man who is working as Under Ground Loader can become sick. Sickness of a person is beyond his control. If a workman is sick and under treatment under company's doctor he should not be dismissed, he should be allowed to join his duty. Sri Meghla Bouri, the concerned workman belongs to Schedule Cast community and weaker section of society. Sri Meghla Bouri does not have any source of income. Now he is at the stage of starvation along with his family. Sri Meghla Bouri is illiterate person and he is not aware about the rules and regulations of the company. The concerned workman has challenged the finding of the Enquiry Officer and stated that Enquiry Officer proved the charges by ignoring the fact that the workman was sick. His sick paper was not considered. Sri Meghla Bouri has prayed that he should be allowed to join his duty with full back wages and with all other consequential benefits.

3. The Agent of Nimcha Colliery under Satgram Area of M/s. Eastern Coalfields Limited has stated in his written statement that concerned union has no *locus standi* to agitate this dispute as the workman is not the member of the union. Union has raised this dispute after one year of the Dismissal Order therefore this reference is not maintainable. The workman is habitual absentee. Sri Meghla Bouri attended only 105 days in year 2002, 82 days in year 2003 and 54 days in year 2004. In year 2005 due to his unauthorized absence enquiry was conducted. Workman participated in the enquiry and availed all the opportunities to which he was entitled. Enquiry Officer held him guilty for the charges levelled against him. The workman is not entitled to any relief.

4. The union has filed following documentary evidences :

(i) Xerox copy of the Identity Card of the workman in which his date of birth is written as 22 years as on 28.11.1989, (ii) Xerox copy of the Mercy Appeal in which date i.e. on 29.07.2009 the age of the workman was 42 years of age and his absence was only 2 months and 12 days, (iii) Xerox copy of the Memorandum of Settlement signed by the management before Regional Labour Commissioner (Central), Asansol on 22.05.2007 in which management agreed to allow the workman whose absence was up to 9 months and age up to 45 years, (iv) Xerox copy of the Dismissal Letter dated 7/14.10.2005, (v) Xerox copy of the information about appointment of Enquiry Officer for conducting the enquiry by the Agent of Nimcha (R) Colliery, (vi) Xerox copy of the Dismissal Letter issued to him.

Sri Meghla Bouri has filed affidavit in his evidence. He has been cross-examined by the learned advocate of Nimcha (R) Colliery of M/s. Eastern Coalfields Limited.

The Agent of Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited has not filed any documentary or oral evidence.

5. I have heard Sri Rakesh Kumar, learned union representative on behalf of workman and Sri P. K. Goswami, learned advocate on behalf of Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited.

6. Sri Rakesh Kumar, learned union representative has argued that Sri Meghla Bouri was absent from 25.03.2005 to 07.06.2005 merely for the period of 2 months and 14 days. He was under treatment of colliery hospital from 26.03.2005 to 29.04.2005 from 30.04.2005 he was under treatment of private doctor. He argued that as per Memorandum of Settlement if the age of a any workman is 45 yrs or less and if period of absence is up to 9 months he can be reinstated. At the relevant time the age of Sri Meghla Bouri was 42 yrs. His absence was less than 2 and half months therefore he ought to have been reinstated because he was sick. He has further argued that the departmental enquiry was biased and partial his sick paper was not considered. Before passing Order of Dismissal 2<sup>nd</sup> show cause notice was not issued to him. Punishment of dismissal is too harsh.

On other hand Sri P. K. Goswami, learned advocate of Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited has argued that Sri Meghla Bouri is habitual absentee but management took lenient view in past. But his absence in 2005 in departmental enquiry was considered and he was dismissed from service. Punishment of dismissal is just and proper.

7. It is not disputed that Sri Meghla Bouri was a permanent employee of Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited. It is also not disputed that Sri Meghla Bouri has been dismissed from service for his absence. The allegation of workman is that his absence was due to compelling circumstances, due to his sickness. Partially he was under treatment of colliery hospital. Departmental enquiry is partial and vitiated. Whereas the allegation of Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited is that Sri Meghla Bouri is habitual absentee. In departmental enquiry he duly participate and availed all the opportunities for which he was entitled.

8. The unauthorized absence is one of the misconduct, mentioned in the Certified Standing Order. A delinquent workman can be charge sheeted, for his unauthorized absence and can be punished after departmental enquiry. Since the workman has challenged the genuineness of departmental enquiry and alleged that his Medical Paper was ignored by Enquiry Officer. Therefore at this stage the perusal of departmental enquiry is necessary. The agent of Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited has not filed the copy of Charge Sheet, copy of statement of witness, defence witness if any of delinquent workman, enquiry proceeding and enquiry report. It is settled law that burden to prove the misconduct of delinquent employee is on employer. Employer has to discharge the burden that the employee was guilty of misconduct. In absence of copy of witness and cross-examination, if any, it can not be ascertained how far the charges are substantiated against delinquent workman namely Sri Meghla Bouri.

9. The departmental enquiry as alleged by Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited, has been conducted by Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited. Naturally these documents ought to have been in possession of Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited. It was the responsibility of Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited to submit those relevant documents. These documents are of vital importance which could throw light regarding guilt of delinquent workman. By not filing these documents the tribunal is bound to draw adverse inference against Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited, under Section 114(G) of the evidence act. Tribunal will draw the presumption that there was no departmental enquiry against the workman at all, or if there departmental enquiry it was invalid, partial and biased. That's why Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited withheld these documents.

10. Hon'ble Supreme Court in Gopal Krishnaji Ketkar v/s Mohd. Haji Latif and ors, AIR 1968 SC 1413 has held that :

*“ Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. ”*

11. The finding of Enquiry Officer is not on record. The unauthorized absence or absence from duty without any application or prior permission does not always mean willful. The departmental authority requires to prove that the absence of delinquent workman was willful for which he has to consider the explanation, defence evidence and medical or sick papers of concerned workman. The evidence of workman is that his sick paper was ignored by the Enquiry Officer. Without considering the medical or sick paper there can be no finding regarding willful absence. Before imposing punishment of discharge or dismissal fair play requires that the delinquent workman is given a reasonable opportunity to put forth his defence before the Enquiry Officer, in the enquiry proceeding, in accordance with the rules of Natural Justice. Natural Justice mandates that departmental enquiry should be held impartially, objectively and after giving an opportunity of hearing to the delinquent workman. Fair opportunity and fair trial are elements of the Principle of Natural Justice which are always applicable in departmental enquiry. Reasonable opportunity means not only framing charges and asking for explanation but much more. The employee must be apprised of the material on which the charges were framed, so that he could have a proper opportunity. Without affording opportunity of being heard, no order adverse to a person can be passed. Principle of Natural Justice requires that before taking action against the concerned workman, he must have a right to be heard. When the statute is silent, Principle of Natural Justice can be read into unless a statutory provision specifically dispenses with the Principle of Natural Justice. In case of State Government Houseless Harijan Employees Association v/s State of Karnataka & Others (2001) 1 SCC 610, the hon'ble Apex Court observed that the requirements of Natural Justice will be read into statutory provisions unless excluded expressly or by necessary implication.

12. From perusal of dismissal order no. SAT/Pur/Termination/05/4697 dated 7/14.10.2005. It is manifest that after conclusion of enquiry and before passing Dismissal Order dated 7/14.10.05 2<sup>nd</sup> Show Cause Notice was not issued to the delinquent workman. In view of law propounded hon'ble Apex Court in Union of India & Others v/s Mohd. Ramzan Khan, 1990 (61) FLR 376, 2<sup>nd</sup> Show Cause Notice to the proposed punishment before passing the order of termination is mandatory.



13. Right to livelihood is an important right. Deprivation of right to livelihood would not only denude the life of its effective content but would make life impossible to live. Such important right can only be deprived by any procedure established by law. Right to livelihood is regarded as a part of the right to life. That which alone makes it possible to live, must be deemed to be an integral component of the right to life. If a person is deprived of his right to livelihood it means he has been deprived from his life. Such deprivation can be effected by a valid and impartial and bona fide enquiry. Without conducting a valid and impartial domestic enquiry the punishment of dismissal is illegal. For mere absence from duty for less than 2 and ½ months the punishment of dismissal, even without valid enquiry is too harsh, disproportionate and shocking to the unproved guilt of the workman

14. Sri Meghla Bouri the concerned workman has stated in Para- 10 of his written statement that has without any source of income. He is at the stage of starvation along with his family members. In Para- 8 of his affidavit he has stated on oath that he has not having any source of income to maintain livelihood. He is at the stage of starvation along with his family members. This fact and evidence has not been rebutted by Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited. His date of appointment is 27.04.1990. As per his evidence he is unemployed from date of dismissal. He is permanent employee. The concerned workman is illiterate and belongs to Schedule Cast community. Considering his period of service rendered, period of unemployment during dismissal, and his illiteracy, there is no possibility of getting alternate employment.

15. Hon'ble Apex Court in Hindustan Tin Works Pvt. Ltd. v/s Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 has held that :

*“ The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman has been reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule.”*

16. In view of law laid down by hon'ble apex court Sri Meghla Bouri is entitled for full back wages from date of dismissal i.e. 14.10.2005 till his re-instatement. It is settled law that if dismissal of workman in set-a-side the workman will be reinstated with continuity of service with all service benefits eg. promotions, increments etc. It will be treated that impugned disciplinary proceeding was never initiated against him.

17. In view of discussion above, the action of management of Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited in dismissing Sri Meghla Bouri from service w.e.f. 14.10.05 is illegal and unjustified. The Order of Dismissal of Sri Meghla Bouri dated 14.10.05 is hereby set-a-side. Nimcha (R) Colliery under Satgram Area of M/s. Eastern Coalfields Limited is directed to re-instate Sri Meghla Bouri with full back wages from date of dismissal till his re-instatement with continuity of his service. It is further directed that Sri Meghla Bouri will get all service benefits eg. promotions, increments, etc. from 14.10.05 onwards. Sri Meghla Bouri be imposed a punishment of stoppage of 2 (Two) annual increments without cumulative effect.

#### ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1781.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीसीबीएफ के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 51/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-42012/180/2003-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1781.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of Central Cattle Breeding Farm and their workmen, received by the Central Government on 19.08.2016.

[No. L-42012/180/2003-IR (CM-II)]

RAJENDER SINGH, Section Officer

### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

##### Present:

Shri B.C. Rath,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

#### INDUSTRIAL DISPUTE CASE NO. 51/2004

Date of Passing Order – 26<sup>th</sup> May, 2016

##### Between:

The Director,  
Central Cattle Breeding Farm,  
Department of Animal  
Husbandry & Dairying, Ministry of  
Agriculture, Po. Sunabeda, Dist. Koraput

...1<sup>st</sup> Party-Management

##### (And)

1. The President, CCB Farm  
Employees Association, Po. Senabeda,  
Dist. Koraput – 763 002.
2. The General Secretary, C.C.B.F.  
Workers Union, Sunabeda

...2<sup>nd</sup> Party-Unions

##### Appearances :

Shri Kunal Kishore, Law Officer	...	For the 1 <sup>st</sup> Party-Management
Shri Ashok Kr. Mohanty, General Secretary	...	For the 2 <sup>nd</sup> Party- Union

### AWARD

The Government of India in the Ministry of Labour has referred an industrial dispute existing between the employers in relation to the management of Central Cattle Breeding Farm and their workman in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act vide its letter No. L-42012/180/2003 – IR (CM-II) dated 03.08.2004 in respect of the following matter.

“Whether the demand of the C.C.B. Farm Employees’ Association to regularize all the casual TS workers who have completed 240 days of continuous service in a calendar year in the establishment to get all the facilities at par with other regular workers is legal and justified? If yes, to what relief they are entitled?

2. Briefly stated facts leading to the reference are that 1<sup>st</sup> Party-Management firm started functioning in the year 1972 at Sunabeda in the district of Koraput of Odisha for the purpose of breeding high quality of bulls and production of semen for such purpose and for its distribution through-out the country. Initially 206 persons were employed in the firm as casual workers/N.M.R. When the Union of said casual workers put-forth demand for regularization of services of those casual workers, a settlement was reached out that efforts will be made for regularization of service of casual workers who had completed 240 days of work and accordingly a list of NMRs/casual workers completing 240 days in engagement is to be prepared in accordance to seniority. It has been alleged by the 2<sup>nd</sup> party-Union that a list of 145 NMR workers was prepared and sent to the Ministry of Agriculture for taking steps for regularization of those enlisted workmen. In the meanwhile pursuant to a judgement of the Hon’ble Supreme Court relating to regularization of casual workers, a scheme was introduced in the year 1992 by the Central Government for grant of temporary status to such casual workers employed in the 1<sup>st</sup> party-Management as well as other establishment of the Central Government. Pursuant to such scheme 108 casual labourers of the 1<sup>st</sup> Party-Management have been granted temporary status with

effect from 01.09.1993. It is pertinent to mention here that provision is also made in the scheme for accommodating such temporary status workers against Group-D posts (which has been presently called Multi Tasking Staff) in a proportion of 2 : 1 (two from casual labourer/workers having temporary status and one from direct recruit) provided such casual workers has the requisite qualifications for such appointment to Group-D posts. It has been further averred by the workmen that though the enlisted casual workers were given temporary status, they are not provided with all facilities of pay and allowances provided to a permanent Group-D employee of the Central Government. A demand was made from time to time for regularization of services and absorption of those temporary status workers in Group-D posts. It is their further claim that when the services of casual workers/labourers engaged in similar farm situated outside the state i.e. in Bangalore and Madras were regularized pursuant to the direction of the Supreme Court in a Writ preferred by the workmen of those establishment, a demand was put-forth by the workmen-Union for regularization of services of enlisted temporary status workers and step was taken by the 1<sup>st</sup> Party-Management for creation of 86 numbers of regular Group-D posts and for its approval by the Central Government. It has been further averred that most of the workmen though being engaged from the year 1972 are deprived of availing benefits like pension, permanency, gratuity, family pension, medical facilities, fuel allowance, washing allowance, liveries, provident fund, and other service benefits which are extended to compassionate appointment of legal heirs of a deceased worker, leave benefits etc. As the Ministry of the 1<sup>st</sup> Party-Management have given regularization benefit to the casual labourers of other firms situated outside the State, the disputant-workmen cannot be discriminated and deprived of same facilities that being extended to other workmen engaged in other farms. Prayer has been made for directing the Management to regularize the services of those temporary status workers and extension of all facilities at par with other regular workers.

3. It is pertinent to mention here that the reference was made on the basis of a demand put-forth by the President, C.C.B Farm Employees' Association, Koraput and accordingly initially the said union was noticed to file its statement of claim. The other 2<sup>nd</sup> party-Union i.e. the General Secretary, C.C.B.F Workers Union, Sunabeda has been impleaded in the reference pursuant to the order dated 06.08.2008 of the Hon'ble High Court passed in W.P.(C) No. 9772/2005. Facts averred by the Unions in their respective statement of claim are mostly related to the claim of regularization of services of the temporary status workmen engaged prior to the Scheme of the year 1993.

4. The 1<sup>st</sup> Party-Management has resisted the claim of the workmen taking a stand that pay and all allowances facilities as extended to the regular worker is being provided to the temporary status worker except pension scheme, compassionate appointment to the legal heirs and leave benefits etc. in view of the introduction of scheme for grant of temporary status and regularization of casual workers. Regularization of services of such temporary status workmen is carried out due to want of sufficient sanctioned post in Group-D cadre Steps are being taken from time to time for creation of sufficient number of Group-D posts awaiting approval of the proposal by the Central Government for regularization of services of those temporary status workers. As the workmen were employed as a casual labourers/workers and their engagement was not against any sanctioned post the demand for regularization of their service and their absorption in Group-D category post is not justified and legal. It has been further averred that as per the settlement reached out between the workers of the Union and 1<sup>st</sup> Party-Management and in view of the scheme of the temporary status workers adopted by the Central Government temporary status workers from the workmen list are being adjusted against sanctioned available Group-D category posts. Due to want of sufficient number of such sanctioned posts the demand of the workmen cannot be fulfilled. Besides, maintainability of the reference is also challenged on a contention that disputes of similar nature had already been raised in the Central Administrative Tribunal, Cuttack Bench vide O.A. No. 145/1990 and M.A. No. 384/1997, M.A. No. 185/98, C.P. No. 146/1998. The O.A was disposed of on 17.3.1991 with a direction to the 1<sup>st</sup> party-Management to regularize the workers under the casual labourers (grant of temporary status and regularization) Scheme, 1993 according to the seniority as and when vacancies in Group-D occurs. Misc. Application and Contempt proceedings were also preferred for regularization and the same were dropped by the C.A.T. on being satisfied that the order of the said Tribunal is being complied by the 1<sup>st</sup> Party-Management. The workers of the Union having failed to challenge such order of the Hon'ble C.A.T before any higher forum this Tribunal is not competent to answer the reference on the principle of *rejudicata*.

5. Keeping in view the pleadings of the parties following issues have been settled for proper and effective adjudication of the dispute under the reference.

#### ISSUES

1. Whether the reference is not maintainable as the dispute out of which this reference arises has already been decided by the competent court of law?
2. Whether the demand of the C.C.B.Farm Employees' Association to regularize all the casual/TS Workers who have completed 240 days of continuous service in a calendar year in the establishment to get all the facilities at par with other regular workers is legal and justified?
3. If yes, to what relief they are entitled?

6. The two Unions have examined three number of witnesses and filed certain documents, but not exhibited in order to establish their stand whereas the 1<sup>st</sup> Party-Management has examined one witness to counter the stand of the 2<sup>nd</sup> party-Unions.

### **ISSUE NO. 1 & 2**

7 Since these two issues are being inter-related to each other the same are taken up together for the sake of convenience.

As it emerges from the pleadings of the parties that there is no serious dispute to the list prepared for the casual workers/labourers engaged in the 1<sup>st</sup> Party-Management for the purpose of granting temporary status pursuant to the Central Government Scheme of 1993. No dispute has also been raised that any such casual worker employed for more than 240 days prior to the introduction of the scheme has been left out to avail the benefit extended to a temporary status worker. There is also no allegation that pick and choose method being adopted while regularizing such temporary status workers against Group-D post available in the 1<sup>st</sup> Party-Management. The bone of contention between the parties is only confined to regularization of services of other temporary status workers who are yet to be absorbed in Group-D posts and extension of all service benefits to them which are provided to a regular employee. In this regard there is no serious dispute to the fact that equivalent number of Group-D posts required for regularization of the workers pursuant to the provisions of 1993 Scheme are not available in the office of the 1<sup>st</sup> Party-Management. It is also emerging from the pleadings and evidence of the parties that the Management has been giving proposals from time to time for creation of such post to regularize the workmen in view of the order of the Central Administrative Tribunal passed in O.A. No. 145/1990. Undisputedly the workmen seems to have been rendering services to the 1<sup>st</sup> Party-Management for more than 25 years and for the sake of humanitarian consideration their demand appears to be genuine. At the same time it cannot be over-sighted that while being employed initially as casual labourer they were never given assurance to be absorbed in the regular cadre or against any sanctioned posts. Rather, their employment/engagement was on daily wage basis for doing some casual work. There is nothing in the record to suggest that any assurance was given to them at any point of time that their service would be regularized. In the case of “Secretary, State of Karnataka & Others –Versus- Uma Devi & Others” reported in AIR 2006 S.C. 1806 it has been settled by the Hon’ble Apex Court that there is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service as it has been held by the Hon’ble Apex Court that such casual labourers/workers cannot be said to be holders of a post since a regular appointment can be made only by making appointments consistence with the requirements of Article 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages cannot be extended to a claim for equal treatment with those who are regularly employed. It has been further observed by the Hon’ble Apex Court that merely because a temporary employee or a casual wage worker is continued for a time beyond the terms of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It has also been set out by the Hon’ble Apex Court that orders for absorption, regularization or permanent continuance of such employees are passed apparently in exercise of the wide powers under Article 226 of the Constitution. The Hon’ble Apex has further emphasized that such wide power under Articles 226 are not intended to be used for the purpose of perpetuating illegalities, irregularities and improprieties or for scuttling the whole scheme of public employment.

8. In the case of Indian Council Agricultural Research –versus- Santosh AIR 2007 SC 267 the Division Bench of Hon’ble Apex Court have set aside order of the Central Administrative Tribunal, Jodhpur Bench directing the regularization of some temporary status workers observing that granting of temporary status to a casual worker under 1993 Scheme could not bring such employee on to permanent establishment automatically. It is also well settled that the Tribunal or the Court should not be a machinery by its order for creating posts for regularization of such casual workers/labourers. Further-more, the 2<sup>nd</sup> party-Union had preferred Original Application No. 145/1990 before Central Administrative Tribunal, Cuttack Bench for regularization of services of such casual employees and the said O.A. was disposed of by the Tribunal with a direction to the 1<sup>st</sup> Party-Management that regularization of the workers under the casual labourers (grant of temporary status and regularization) Scheme, 1993 should be taken up according to seniority as and when vacancies in Group-D occurs. It is worthy to mention here that two other Misc. Applications had been preferred by the workman in the said O.A. on different occasions for expeditious regularization of the workman which were either dismissed or disposed of on satisfaction of the Tribunal that the 1<sup>st</sup> Party-Management is taking all steps to comply the Tribunal’s direction given in O.A. No. 145/1990. In this regard the Union has nothing to say and the powers of this Tribunal as well as the authority of the Central Administrative Tribunal are mostly identical so far the disputes of regularization of service of temporary status workers are concerned. The issue being dealt and decided by a competent court appears to be a resjudicata to the dispute raised before this Tribunal under the Industrial Disputes Act.

9. Basing upon the decision of the Hon’ble Apex Court in the case of Amarkant Rai –versus – State of Bihar & Others, in Civil Appeal No. 2835 of 2015 arising out of S.L.P. (Civil) No. 20169/2013 and the decision of Hon’ble

Punjab and Haryana High Court in Civil Writ Petition No. 1287/2003 (Gurmeet Singh & Others –Versus- State of Punjab and others) argument has been advanced that the Tribunal is competent to give an award in support of regularization of the service of such casual workman to whom temporary status has been conferred under the Scheme of 1993. The facts and circumstances involved in the cases under reference is apparently distinguishable to the present one. In the decision of the Punjab High Court pick and choose method was observed while regularizing services of temporary workers as a result of which direction was given for regularization of services of casual labourers. Besides direction was given by the Hon'ble Apex Court and Punjab High Court in the above cases by virtue of exercising writ jurisdiction as available to those courts under the Constitution. In view of the various pronouncements of the Hon'ble Apex Court this Tribunal has limited jurisdiction to give an award directing regularization of the service of the workmen i.e. where unfair practice is played by the employer to deprive the workers to get certain benefits That apart it cannot be over-looked that pleading has been advanced by the 2<sup>nd</sup> party-Union that workmen employed in similar institutions like the 1<sup>st</sup> party-Management situating at Haryana and other places have been absorbed against Group-D posts by virtue of the order of the Hon'ble Apex Court and as such the Tribunal has authority to pass award for such regularization of services of the workmen. It has also been contended that 80 posts in Group-D cadre were created by the Ministry of Agriculture for regularization of the workmen employed under the 1<sup>st</sup> party-Management and the posts were returned without being filled up due to administrative incapability of the Director of the Management. But there is no authentic and complete materials before the Tribunal to establish that 80 sanctioned posts were created in Group-D cadre in the 1<sup>st</sup> Party-Management. Similarly neither any copy of the judicial order of the Hon'ble Apex Court or any official paper has been filed before the Tribunal to show that workmen in similar situation have been absorbed permanently in similar organization like Management No. 1 by virtue of direction of the Tribunal or by the Hon'ble Apex Court. For the reasons mentioned above it can be safely said that award to regularize all the casual/temporary status workers cannot be passed by this Tribunal.

### **ISSUE NO. 3**

10. Coming to what relief to which the workmen are entitled to, it is seen that argument has been advanced on behalf of the 2<sup>nd</sup> party-Unions that all service benefits extended to a regular employee shall also be extended to a workman conferred with temporary status since nature of works performed by regular Group-D employees and that of temporary status workers are identical. No serious dispute seems to have been raised by the 1<sup>st</sup> Party-Management to the claim of the Unions that both the category workmen and employees are discharging similar nature of duties. Moreover, temporary status workers are working in the 1<sup>st</sup> party-Management for more than 25 years without being absorbed permanently due to want of sufficient number of sanctioned posts. Undisputedly these temporary workmen are being paid equal wages and allowances to that of wages and allowances granted to a regular employee except certain benefits like medical reimbursement and facilities of compassionate appointment in case of death of a temporary status workman grant of family pension and retirement and gratuity. They are not also provided with articles, like gun boot, dresses etc. Group Insurance Scheme and hill compensatory allowance etc. In the course of argument it was submitted that some of the facilities like hill allowances and some other allowances given to Group-D employee is being also extended to temporary status workers. There is also no dispute that whenever a temporary status workmen is adjusted against permanent vacancy, 50% period of his service in temporary status is counted for the purpose of superannuation benefits. Having regard to the above facts and circumstances it can be safely held that the workmen under the temporary status are also entitled to all allowances and facilities extended to a regular employee except the facility of compassionate appointment, family pension benefit and gratuity as these three facilities are being extended to a permanent government employee. Therefore the 1<sup>st</sup> Party-Management is duty bound to extend equal wages and allowances and facilities, which are being extended to that of a regular Group-D employee, to the casual labours conferred with temporary status workmen except the benefit of family pension, gratuity and compassionate appointment.

11. The reference is answered accordingly.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1782.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईपीएफओ के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 521/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-42012/119/2002-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1782.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 521/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad (Gujarat) as shown in the Annexure in the Industrial Dispute between the management of EPFO and their workmen, received by the Central Government on 19.08.2016.

[No. L-42012/119/2002-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present:

Pramod Kumar Chaturvedi,  
Presiding Officer, C.G.I.T.-cum-Labour Court,  
Ahmedabad  
Dated 14<sup>th</sup> July, 2016

##### Reference: (CGITA) No. 521/2004

The Regional Provident Fund Commissioner,  
EPFO, Bhavishya Nidhi Bhavan, Near R.B.I.,  
Ashram Road, Ahmedabad

...First Party

V/s

Shri Vikram Singh M. Chavda,  
Hiralal Pranlal Chall, Behind Civil Hospital,  
Asarva, Ahmedabad

...Second Party

For the First Party : None

For the Second Party : None

#### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/119/2002-IR (CM-II) dated 30.10.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

#### SCHEDULE

“Whether the action of the Regional Provident Fund Commissioner, Ahmedabad in terminating / discontinuing the service of Shri Vikram Singh M. Chavda w.e.f. 20.01.2000 without following the provisions of Section 25F is legal and justified? If not, to what relief the concerned workman is entitled to and from which date?”

1. The reference dates back to 30.10.2002. The second party submitted the statement of claim Ext. 9 on 17.09.2003 and first party submitted the written statement Ext. 14 on 15.01.2004. Since then, second party has been absent and has also not been leading evidence despite even giving opportunities to lead his evidence even in his absence on the earlier dates. Thus, it appears that the second party has not been intending to prosecute the case.
2. Thus, the case is dismissed in non-prosecution of the case by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1783.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईपीएफओ के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 52/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-42012/204/2003-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1783.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of EPFO and their workmen, received by the Central Government on 19.08.2016.

[No. L-42012/204/2003-IR (CM-II)]

RAJENDER SINGH, Section Officer

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR****Present:**

Shri B.C. Rath,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 52/2004**

L-42012/204/2003-IR(CM-II), dated 13.08.2004

**Date of Passing Order – 7<sup>th</sup> June, 2016****Between :**

1. The Regional Provident Fund Commissioner,  
Employees Provident Fund Organization,  
Orissa, Janapath, Unit-IX, Bhubaneswar.
2. The Regional Provident Fund Commissioner (SRO),  
Sub.- Regional Office, Bhavisyanidhi Bhawan,  
Panposh Road, Rourkela – 769 004, Orissa

1<sup>st</sup> Party-Managements.

(And)

The General Secretary,  
Employees Provident Fund Staff Union,  
C/o. SRO, Near Bus Stand, Rourkela

...2<sup>nd</sup> Party-Union.**Appearances :**

None	...	For the 1 <sup>st</sup> Party-Managements.
None	...	For the 2 <sup>nd</sup> Party-Union

**ORDER**

Both the parties are found absent on repeated call. Perusal of the case record reveals that the 2<sup>nd</sup> party-Union has filed its statement of claim on 30.11.2004, whereas the 1<sup>st</sup> Party-Management on being noticed filed its written statement on 18.7.2006. On the pleadings of the parties issues were settled on 24.11.2010. Thereafter the case was posted for evidence of the 2<sup>nd</sup> party-Union from time to time. Neither the 2<sup>nd</sup> party-Union nor the 1<sup>st</sup> Party-Managements made their appearance except few dates after settlement of issues. Both of them remained absent for which notices were issued to them fixing the case for adducing evidence by the 2<sup>nd</sup> party-Union at Rourkela Camp Court. As none of the parties has appeared on the date fixed it seems that either they are not interested to prosecute their dispute or the dispute might have been settled amicably out of the Tribunal. In the above back-drops there is no alternative than to pass a no-dispute award and accordingly a no-dispute award is passed in the case.

2. Accordingly the reference is answered in the above terms.

Dictated &amp; Corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 19 अगस्त, 2016

**का.आ. 1784.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 58/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.08.2016 को प्राप्त हुआ था।

[सं. एल-22011/30/2008-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 19th August, 2016

**S.O. 1784.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 19.08.2016.

[No. L-22011/30/2008-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

##### Present:

Shri B.C. Rath,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

#### INDUSTRIAL DISPUTE CASE NO. 58/2008

L-22011/30/2008-IR(CM-II), dated 11.09.2008

**Date of Passing Order – 29<sup>th</sup> July, 2016**

##### Between :

The Senior Regional Manager,  
Food Corporation of India,  
Khadya Bhawan, Vani Vihar,  
Bhubaneswar, Orissa

... 1<sup>st</sup> Party-Management.

**(And)**

The General Secretary,  
Food Corporation of India Workers Union,  
58/1, Diamond Harbour Road,  
Kolkatta – 700 023

... 2<sup>nd</sup> Party-Union

##### Appearances :

Shri N.K. Nayak, Manager (IR)	...	For the 1 <sup>st</sup> Party-Management
Shri B. Mohapatra, Vice President	...	For the 2 <sup>nd</sup> Party-Union.

#### ORDER

Authorized representatives for both the parties are present. Perusal of the case record reveals that the 2<sup>nd</sup> party-Union has filed its statement of claim on 26.10.2010, whereas the 1<sup>st</sup> Party-Management on being noticed filed its written statement on 22.12.2010. On the pleadings of the parties issues were settled on 27.09.2011. Thereafter the case was posted for evidence of the 2<sup>nd</sup> party-Union from time to time. But the 2<sup>nd</sup> party-Union inspite of adducing any evidence has filed a memo that they are not interested to proceed with the case and as such prayed to pass a no-dispute order. The representative of the 1<sup>st</sup> Party-Management has raised no objection on the memo of the 2<sup>nd</sup> party-Union. As the 2<sup>nd</sup> party-Union is not interested to prosecute its dispute there is no alternative than to pass a no-dispute order and accordingly a no-dispute order is passed in the case.

2. Accordingly the reference is answered in the above terms.

Dictated & Corrected by me.

B.C. RATH, Presiding Officer